

*Letter of Recommendation: Lindsey Gard*

*Page 2 of 2*

Before I began law school teaching in the fall of 2018, I worked an attorney in private practice for twenty-five years. Lindsey is the type of law student I would have wanted to hire to work at my firm. She is a bright and conscientious student, and she demonstrates excellent character and a strong work ethic. I heartily recommend Lindsey's selection as a judicial clerk in your chambers.

Sincerely,



Michael R. Tripp  
Associate Clinical Professor, Lawyering Skills

UNIVERSITY OF MISSOURI – KANSAS CITY SCHOOL OF LAW

KANSAS CITY · MISSOURI · 64110

**Ryan Copus**  
*Associate Professor of Law*  
Holmes Suite 1-408  
Telephone (512) 496-9700

August 21, 2022

Dear Judge:

I write in support of Lindsey Gard's application for a clerkship in your chambers. Of the more than 300 students that I have taught, Lindsey stands out as one of the most dedicated, collaborative, and eager. I have little doubt that she will excel as a law clerk.

I first met Lindsey as a student in my Spring 2020 Civil Procedure course. During the life of the class, my students submit writing assignments on a weekly basis and take a final exam. Lindsey's writing submissions were uniquely thoughtful and always timely. She is one of those students that professors love to have in a class: she is genuinely curious, willing to ask questions when others aren't, and always prepared. If not for her poise, I would say she is desperate to understand the world. Insofar as you view clerkships as a tool for helping new, inquisitive lawyers understand the practice of law, Lindsey would be an ideal clerk.

As a thinker, writer, and person, Lindsey has always struck me as exceedingly *careful*, an attribute that will serve her well as a lawyer. When asked a question, she almost always knows the right answer immediately (I suspect), but she still pauses for several beats before speaking. I don't mean to suggest that she comes across as insecure or lacking confidence; she simply wants to confirm that she has thought seriously through any possible objections before she takes a position.

Finally, on an interpersonal personal level, Lindsey is a delight. She worked extremely well with her classmates, and in our many interactions, she has been unfailingly professional and solicitous. She is simultaneously joyful and serious, and she would be a positive presence in your chambers.

In summary, I recommend Lindsey to you. Please do not hesitate to contact me via phone (512-496-9700) or email ([copusr@umkc.edu](mailto:copusr@umkc.edu)) with any questions.

Sincerely,

Ryan Copus  
Associate Professor of Law  
UMKC School of Law

**Writing Sample**

Lindsey Gard  
University of Missouri – Kansas City School of Law

**Objective Memorandum**

The following is an excerpt from a memorandum I drafted as third assignment in my first year, first legal writing course. I received a B+ which is the second highest grade in my section. The memorandum is 7 pages long and include a heading, questions presented and discussion only.

**Memorandum**

To: Partner

From: Clerk

Date: October 20, 2021

Re: Continued representation of Jenny Taylor, enforcement of NCA

**Question Presented**

Under Illinois Law does Jenny Taylor have a right to enforce the non-compete agreement contained in the employment contract when the agreement narrowly protects Taylors business interests, Delaney obtained legitimate business interests, the agreement has reasonable geographic, time and activity limits, and is not injurious to the public?

**Discussion**

Taylor likely can enforce the non-compete agreement (NCA) contained in their employment contract. A NCA, assuming it's ancillary to a valid employment relationship, is reasonable, and thus enforceable, only if the agreement is: (1) no greater than required for the protection of the legitimate business interest of the employer; (2) doesn't impose undue hardship on the employee; and (3) isn't injurious to the public. *Reliable Fire Equip. Co. v. Arredondo*, 965 N.E.2d 393, 396 (Ill. 2011). While there are some public policy concerns with NCAs, Illinois doesn't prohibit them in the absence of some legislative enactment. *Mohanty v. St. John Heart Clinic, S.C.*, 866 N.E.2d 85, 100 (Ill. 2006). A NCA isn't enforced when there is lack of mutuality, breach of agreement and the restraints of are unreasonable. *Cockerill v. Wilson*, 281 N.E.2d 648, 649 (Ill. 1972). Determining whether to enforce a NCA is a question of law. *Bishop v. Lakeland Animal Hosp., P.C.*, 644 N.E.2d 33, 35 (Ill.

App. Ct. 1994). Illinois courts favor fair competition and disfavor restrictions on trade and therefore, non-competition clauses are closely scrutinized. *Id.*

In this case, there is no argument the NCA was ancillary to a valid employment contract, there was lack of mutuality or breach of contract. Additionally, there is no legislative enactment that prohibits their enforcement. The NCA was contained in the employment contract so Delaney cannot claim that he wasn't aware of. Under the NCA, if Delaney leaves his employment for any reason, it's enforceable. Therefore, this memorandum address three issues: (A) whether the NCA provides no greater protection than requires of the legitimate business interests of Taylor; (B) whether the NCA imposes undue hardship on Delaney; and (C) whether enforcement of the NCA will injure the public.

**A. The NCA provides no greater protection than requires of the legitimate interests of Taylor**

Taylor meets the first element of the reasonable test. To satisfy the first element: (1) Taylor must have legitimate business interests; and (2) the scope of the NCA must be narrow.

**1. Taylor has legitimate business interests.**

The NCA is necessary to protect Taylor's legitimate business interests. Illinois limits the business interests that a NCA may protect to relationships with "near-permanent" customers of the employer and confidential information. *Reliable Fire Equip.* 965 N.E.2d at 402. When a professional service employs an employee to assist in provisions of these services, there is sufficient evidence to indicate the

employee wouldn't have had contact with the client but for association with the employer, the near-permanency test is satisfied. *Cockerill*, 281 N.E.2d at 651. Likewise, the employee acquires confidential information about the employer's customers which he wouldn't have acquired but for the employment relationship, and subsequently attempts to use it for his own benefit. *Williams Montgomery v. Stellato*, 522 N.E.2d 1100, 1106 (Ill. App. Ct. 1990).

Taylor can automatically establish near-permanency since the veterinarian clinic is a professional service. This is analogous to the *Cockerill* case where the near-permanency test was automatically met. The NCA is also necessary since Delaney gained confidential information which he wouldn't have but for his employment. If Delaney leaves, it would be expected he would want to bring these clients he obtained from Taylor with him. Taylor has a strong argument that she satisfies the first component.

**2. The scope of the NCA must be narrow to protect Taylor's interests.**

The scope of the NCA is no greater than required to protect Taylor's legitimate business interests. Factors to be considered protecting business interests include: the near-permanence of customer relationships, the employee's acquisition of confidential information through his employment, and time and place restrictions. *Bishop*, 644 N.E.2d at 37. The reasonable limitation to territory and time aren't absolute and will vary with the facts of each case. For example, a geographic limit of twenty-miles was reasonable. *Cockerill*, 281 N.E.2d at 651.

(Wilson's twenty-miles restriction to practice veterinary medicine was reasonable since his clients were scattered throughout the twenty-mile range). One may be engaged in the practice of veterinary medicine within the territory he administers to sick animals. *Id.* A temporal restriction can be based on number of years it took to develop a referral base. *Mohanty*, 866 N.E.2d at 100 (Monteverde testified that it took a minimum of three to five years to develop a referral base). Temporal restrictions can also be based on similar restrictions in other restrictive covenants that have been upheld as reasonable. *Id.*

Taylor chose the thirty-five mile radius because many of her patients come from nearby counties ranging from eleven to forty miles away. Like the geographic limit in *Cockerill*, this geographic limit Taylor choose is likely to be found reasonable. Taylor's time restriction is well within the ranges of proof by reported case law. Like the time limit in *Monhanty*, a court here likely would find that Taylor's two year restriction would be reasonable. Therefore, a court is likely to find that the NCA is no greater than required to protect Taylor's legitimate business interests.

**B. The NCA will not cause undue hardship to Delaney.**

If the NCA is enforced it won't cause undue hardship to Delaney as he will still be able to make an adequate living. If the activity, geographic and time limitations are reasonable, there is no undue burden. *Mohanty*, 866 N.E.2d at 99. In *Mohanty*, the court found that there was no undue burden stating, "[the doctors] are free to practice medicine outside the five-mile limit, which, given the heavily

populated Chicago metropolitan area, would not deprive them of employment.”

Mohanty, 866 N.E.2d at 99 (quoting *Mohanty v. St. John Heart Clinic, SC*, 832 N.E.2d 940 (Ill. App. Ct. 2005)). Additionally, geographic restrictions will be upheld if the effect on the employee will only be within a narrowly circumscribed area of a large metropolitan area. *Id.* (the two- and five-mile restrictions didn’t cause employees any undue hardship). Temporal restrictions will be enforced if they’re not greater than necessary to protect the employer’s interests. *Id.* at 100.

Delaney still has good employment prospects regardless of the NCA. The NCA restricts only small-animal clinics. Delaney specializes in cat surgeries which is an area where he can still practice along with large-practice. This provides Delaney with opportunities to work in the thirty-five mile restricted area. He is free to work in whatever area he chooses outside of the narrow thirty-five mile radius for a short two year period. The NCA won’t cause undue hardship to Delaney.

**C. The NCA won’t cause undue hardship to the public.**

If the NCA is enforced the public won’t be injured as there will be adequate veterinarian care available. Courts want to ensure that if NCAs are enforced, there will still be sufficient ways to get the care needed. In *Mohanty*, the court couldn’t find that barring plaintiffs from the practice of medicine within the restricted area for the stated time periods would seriously diminish the number of cardiologists available to provide the necessary patient care. *Mohanty*, 866 N.E.2d at 100.

If Delaney leaves there would be a sufficient number of veterinarians to meet the public needs. Delaney has worked at the clinic for six months and failed to

establish himself. His surgery was small part of the clinic and additional hours are unlikely to establish regular clients. Taylor or other partners at her clinic may have to work weekend shifts if she wants to accommodate these weekend clients. Barring Delany from the practicing on small animals wouldn't seriously diminish the number of veterinarians available to provide care to the animals in need.

**Applicant Details**

First Name **Benjamin**  
 Middle Initial **M.**  
 Last Name **Gerzik**  
 Citizenship Status **U. S. Citizen**  
 Email Address [benjaminmgerzik@gmail.com](mailto:benjaminmgerzik@gmail.com)  
 Address

**Address****Street****5350 Amesbury Dr. Apt. 2008****City****Dallas****State/Territory****Texas****Zip****75206****Country****United States**

Contact Phone Number **9794502440**

**Applicant Education**

BA/BS From **University of Texas-Austin**  
 Date of BA/BS **August 2020**  
 JD/LLB From **Southern Methodist University Dedman School of Law**  
<https://www.smu.edu/Law/Career-Services>

Date of JD/LLB **May 1, 2023**  
 Class Rank **33%**  
 Law Review/Journal **Yes**  
 Journal(s) **SMU Law Review**  
 Moot Court Experience **No**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/ Externships	<b>Yes</b>
Post-graduate Judicial Law Clerk	<b>No</b>

### **Specialized Work Experience**

Specialized Work Experience	<b>Appellate</b>
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### **Recommenders**

Kahn, Jeffrey  
jkahn@smu.edu  
214- 768-2792

McGriff, Keidra  
mcgriffk@lanwt.org

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**BENJAMIN M. GERZIK**

(he/him) ■ 5350 Amesbury Dr. Apt. 2008, Dallas, TX 75206 ■ (979) 450-2440 ■ bgerzik@smu.edu

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February 28, 2023

The Honorable Irma C. Ramirez  
U.S. District Court for the Northern District of Texas  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Re: 2023 – 2025 Term Law Clerk Position

Dear Judge Ramirez:

I am a third-year student at the SMU Dedman School of Law, and I am interested in the opportunity to serve your chambers as a law clerk for the 2023–2025 term. Continuing to work for the Northern District of Texas would provide an incomparable experience in contributing to justice for the people the federal system serves. I am eager for the opportunity to learn from such an experienced judge and advocate while beginning my career as a lawyer dedicated to the pursuit of equal justice for all Texans.

My experiences throughout law school give me the ability to contribute to your chambers' work efficiently and diligently. I have experience with the Court's substantive and procedural law and am well prepared to contribute to the work of a federal magistrate judge. Earning As in my Constitutional Criminal Procedure, substantive Criminal Law, and Federal Courts courses, for example, strengthened my knowledge in early-stage criminal procedure and federal civil procedure, and I am eager to learn more in chambers. Earning an A in Professor Garner's Advanced Legal Writing course honed my writing and research skills with the specific intention of undertaking assignments in such important, nuanced areas as civil rights and employment law.

Beyond academic experience, though, my past work has given me valuable insight into what it means to serve a judge as their law clerk. The great honor of previously interning with Chief Justice Hecht and currently externing with Judge Lynn have not only immediately strengthened my legal reasoning and communication skills but given me a heightened appreciation of a law clerk's role and duties. Working with brilliant clerks in both chambers built my ability to serve as a representative for the judge, instilling the importance of skills such as learning to write in the judge's voice, as well as knowing when to subordinate your own legal analysis in deference to the judge's expert decisions.

Most importantly, all of my learning and work experience throughout law school has underscored the necessity of intentionally serving the people that this law affects. Fairly and effectively administering justice is not just an intellectual exercise, but a necessary part of ensuring that people may experience equal justice under the law. Learning your commitment not only to justice in your work, but throughout the local legal community, has been inspiring; it would be an honor to learn from you in and out of chambers over the coming two years.

My experiences qualify me for this position, and I would be honored to begin my legal career serving in your chambers. My letters of recommendation are forthcoming. Thank you so much for your time and consideration.

Sincerely,



Benjamin M. Gerzik

## BENJAMIN M. GERZIK

(he/him) ■ 5350 Amesbury Dr. Apt. 2008, Dallas, TX 75206 ■ (979) 450-2440 ■ bgerzik@smu.edu

### EDUCATION

#### SMU Dedman School of Law

Dallas, TX

*Candidate for Juris Doctor*, May 2023

- GPA: 3.515 (Top 25% = 3.540)
  - Dean's List, Fall 2020, Spring 2021; Dean's Scholarship Recipient
  - Phi Delta Phi International Legal Honor Society
- SMU Law Review Association, *Comment Editor* (2022 – Present); *Staff Editor* (2021 – 2022)
  - Student Comment, *Reforging the Master's Tools: Critical Race Theory in the First-Year Curriculum*, selected for forthcoming publication in the SMU Law Review Forum
- The Barristers; American Constitution Society at SMU, *Community Engagement Director* (2021 – 2022)
- Dallas Bar Association, *Student Member*; Maine State Bar Association, *Student Member*

#### The University of Texas at Austin

Austin, TX

*Bachelor of Arts*, Philosophy; Minor in Music, August 2020

- Liberal Arts Honors Program; Sparky Park Records, *Record Label Founder*; Echo Literary Magazine, *Submissions Review Board*
- Worked 30+ hours per week at Don Japanese Kitchen to defray educational expenses

### WORK AND LEADERSHIP EXPERIENCE

#### The Honorable Barbara M. G. Lynn, U.S. District Court, Northern District of Texas

Dallas, TX

*Judicial Extern*, January 2023 – Present

#### SMU Underwood Law Library

Dallas, TX

*Faculty Research Fellow*, September 2022 – Present

- Catalogued hundreds of rejected federal plea agreements, analyzing when and why federal judges do not accept them
- Surveyed centuries of case law to evaluate developing disconnect between language and realities of fiduciary duties

#### Legal Aid of NorthWest Texas

Dallas, TX

*Housing, Consumer Protection, and Public Benefits Division Extern*, August 2022 – December 2022

- Drafted demand letters for eviction cases based on landlord overcharging tenants, failing to provide proper notice
- Represented Legal Aid at community events, providing resources to people affected by flooding and discrimination

#### The Honorable Chief Justice Nathan L. Hecht, The Supreme Court of Texas

Austin, TX

*Dallas Bar Foundation James A. Baker Memorial Clerk*, May 2022 – July 2022

- Wrote study memo, considering briefs and conducting additional research to recommend the Court grant or deny petition
- Composed summaries of final opinions, easing public and attorney access to complex legal developments from the Court
- Proofread final opinions for accurate grammar, citations, and formatting; suggested changes for structural, stylistic clarity

#### The Deason Criminal Justice Reform Center

Dallas, TX

*Deason Scholar*, May 2021 – May 2022

- Drafted copy for law review articles, policy briefs, and reports concerning Sixth Amendment and due process issues
- Researched case law, statutes, and legislative history for contemporary and centuries-old law regarding prosecutorial discretion, right to counsel, pandemic policy, rural legal access, indigent defense, and systemic racism in criminal law
- Adapted symposium held with SMU Law Review into five-part criminal justice reform podcast series, *Just Reform*

#### The Justice Initiative

Dallas, TX

*SMU Chapter Cofounder and National Student Liaison*, October 2020 – Present

- Collaborate in program held by Howard and Harvard Law with social justice-oriented students, attorneys, and professors
- Host physical and remote events regarding mass incarceration, law school curriculum, movement lawyering, and more
- Serve as first point of contact between guest speakers and the Justice Initiative, introducing them at national meetings
- Organized local chapter at SMU, building base of SMU students, professors, and alumni dedicated to systemic justice

#### Matthew J. Kita, Attorney and Counselor at Law

Dallas, TX

*Pro Bono Law Clerk*, December 2020 – January 2021

### INVOLVEMENT AND INTERESTS

**Inside Books Project** – *Volunteer*, Fall 2015 – Spring 2020, Summer 2022

Austin, TX

**The Austin Homeless Memoirs** – *Cofounder*, Spring – Fall 2016

Austin, TX

**Interests** – The NYT Daily Crossword, singing, folk guitar, music production, Japanese cuisine, writing poetry, board games

## Unofficial Transcript

Name: Gerzik, Benjamin M  
 Student ID: 45172989  
 SSN: XXX-XX-9928  
 DOB: 04/29/XXXX

Print Date: 2023/02/25

## ----- Academic Program History -----

Program: Law - Juris Doctor  
 2020/07/10: Active in Program

## ----- Beginning of Law Record -----

Fall 2020 (2020/08/17 - 2020/12/11)

For Fall 2020, SMU's course instruction and scheduling included protocols for safety and flexibility in response to the COVID-19 pandemic. SMU taught many courses partially or fully virtual.

Course	Description	Attempted	Earned	Grade	Points
LAW 6365	Legislation and Regulation	3.00	3.00	A-	11.100
LAW 6367	Contracts I	3.00	3.00	B	9.000
LAW 6403	Torts	4.00	4.00	B	12.000
LAW 7106	Dallas, Systemic Racism, & Law	1.00	1.00	P	0.000
LAW 8341	Criminal Law	3.00	3.00	A	12.000
LAW 8375	LRWA I	3.00	3.00	A-	11.100

Term GPA : 3.450 Term Totals : 17.00 17.00 55.200

Cum GPA 3.450 Cum Totals 17.00 17.000 55.200

Spring 2021 (2021/01/13 - 2021/05/06)

For Spring 2021, SMU's course instruction and scheduling included protocols for safety and flexibility in response to the COVID-19 pandemic. SMU taught many courses partially or fully virtual.

Course	Description	Attempted	Earned	Grade	Points
LAW 6264	Contracts II	2.00	2.00	B	6.000
LAW 6366	Constitutional Law I	3.00	3.00	B+	9.900
LAW 6404	Property	4.00	4.00	A	16.000
LAW 6405	Civil Procedure	4.00	4.00	A-	14.800
LAW 8376	LRWA II	3.00	3.00	B+	9.900

Term GPA : 3.537 Term Totals : 16.00 16.00 56.600

Cum GPA 3.493 Cum Totals 33.00 33.000 111.800

Fall 2021 (2021/08/16 - 2021/12/10)

Course	Description	Attempted	Earned	Grade	Points
LAW 6204	Advanced Legal Research	2.00	2.00	B-	5.400
LAW 6420	Business Enterprise	4.00	4.00	B	12.000
LAW 7249	Critical Race Theory	2.00	2.00	A	8.000
LAW 7361	Gender Law	3.00	3.00	A-	11.100
LAW 8050	Public Service Requirement	0.00	0.00		0.000
LAW 8311	Constitutional Law II	3.00	3.00	A-	11.100

Term GPA : 3.400 Term Totals : 14.00 14.00 47.600

Cum GPA 3.465 Cum Totals 47.00 47.000 159.400

Spring 2022 (2022/01/06 - 2022/05/06)

Course	Description	Attempted	Earned	Grade	Points
LAW 6160	Adv Legal Writing/Editing	1.00	1.00	A	4.000
LAW 6241	Election Law	2.00	2.00	A-	7.400
LAW 6304	Administrative Law	3.00	3.00	B	9.000
LAW 6315	Advanced Criminal Law	3.00	0.00	I	0.000

Course Topic(s): 6TH AMEND RIGHT TO COUNSEL

LAW 7244	Income and Wealth Inequality	2.00	2.00	A-	7.400
LAW 7350	Professional Responsibility	3.00	3.00	B+	9.900

Term GPA : 3.427 Term Totals : 14.00 11.00 37.700

Cum GPA 3.457 Cum Totals 61.00 58.000 197.100

Fall 2022 (2022/08/15 - 2022/12/09)

Course	Description	Attempted	Earned	Grade	Points
LAW 6117	Govt & Public Interest Extern	1.00	1.00	B+	3.300
LAW 6309	Con. Crim. Pro.: Investigation	3.00	3.00	A	12.000
LAW 6349	Federal Courts	3.00	3.00	A	12.000
LAW 6360	Labor Law	3.00	3.00	A	12.000
LAW 8201	Legal Externship	2.00	2.00	P	0.000
LAW 8455	Evidence	4.00	4.00	B+	13.200

Term GPA : 3.750 Term Totals : 16.00 16.00 52.500

Cum GPA 3.515 Cum Totals 77.00 74.000 249.600

Spring 2023 (2023/01/05 - 2023/05/05)

Course	Description	Attempted	Earned	Grade	Points
LAW 6205	Law, Literature, and Medicine	2.00	0.00		0.000
LAW 6239	Police Misconduct Litigation	2.00	0.00		0.000
LAW 7212	Selected Topics in Labor Law	2.00	0.00		0.000
LAW 7251	Civil Rights Litigation	2.00	0.00		0.000
LAW 7334	Persp on Counter Terrorism	3.00	0.00		0.000
LAW 8137	Federal Judicial Externship	1.00	0.00		0.000
LAW 8201	Legal Externship	2.00	0.00		0.000

Term GPA : 0.000 Term Totals : 14.00 0.00 0.000

Cum GPA 3.515 Cum Totals 91.00 74.000 249.600

Law Career Totals  
 Cum GPA: 3.515 Cum Totals 91.00 74.00 249.600

----- End of Unofficial Transcript -----



February 28, 2023

The Honorable Irma C. Ramirez  
U.S. District Court for the Northern District of Texas  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Re: Letter of Recommendation for Benjamin M. Gerzik

Dear Judge Ramirez:

Please consider my former student, Benjamin M. Gerzik, for a post-graduation clerkship in your chambers. I met Ben when he was a first-year law student in my course, "Constitutional Law I." I continued to get to know him when, as a 2L, he was a member of my "Constitutional Law II" course. This semester, I am delighted to have him as a contributing member of my upper-level seminar, "Perspectives on Counterterrorism."

Constitutional Law I and II are required courses at SMU. In Constitutional Law I, students are introduced to the concepts and complexities of judicial review and the powers and limits on those powers of the federal government. In Constitutional Law II, students study many of the individual rights provisions of the U.S. Constitution, with a particular focus on the Equal Protection and Due Process Clauses. These are foundational courses in our program of legal study and they are not easy ones. As a rule, both courses also involve subjects that can be controversial and difficult for students to discuss.

Ben was one of sixty-six students in Constitutional Law I and one of ninety-nine students in Constitutional Law II. Those numbers would make it hard for anyone to stand out, but Ben is someone I remember well. He was a thoughtful contributor in and out of class. His grades (B+ in Con Law I; A- in Con Law II) show both his hard work and his steady ascent in his study of law. I'm not the least surprised, therefore, to see that in his last term he achieved a 3.75 GPA while taking five difficult classes as well as participating in a legal externship. In three of those classes, he earned solid A grades. I'm expecting a similar high-quality performance from him in my seminar this semester as well as in his other classes (six classes and an externship!).

Ben's transcript cannot, of course, document his outstanding interpersonal skills. These I have come to know as the faculty supervisor of a student organization, The Justice Initiative. Ben is one of the co-founders of the SMU chapter of this national organization. I found working with him and his fellow organizers a pleasure. I observed them carefully plot the course of what they wanted to do, with minimal intervention from me, and then execute their plan in a professional manner. As their efforts came to fruition, I wrote to our then dean, Jennifer Collins, in support of the group, noting "It is pleasant to be advising this new group. They are full of energy and a

desire to make the world a better place.” I cannot think of a more concise and accurate description of Ben Gerzik. He is full of energy and a burning desire to make the world around him a better place than he finds it to be.

Please do give Ben every serious consideration for this clerkship. I recommend him without reservation.

Yours sincerely,

Jeffrey D. Kahn  
University Distinguished Professor  
Dedman School of Law, Southern Methodist University  
(214) 768-2792; [jkahn@smu.edu](mailto:jkahn@smu.edu)



## Legal Aid of NorthWest Texas

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With offices in Abilene, Amarillo, Brownwood, Dallas, Denton, Fort Worth, Lubbock, McKinney, Midland, Odessa, Plainview, San Angelo, Waxahachie, Weatherford and Wichita Falls

Writer's Direct Extension: 2218  
Writer's Email Address: [mcgriffk@lanwt.org](mailto:mcgriffk@lanwt.org)

March 24, 2023

Re: Benjamin Gerzik

To whom it may concern:

I am writing this letter on behalf of former Legal Aid of NorthWest Texas's Extern, Benjamin Gerzik. Benjamin interned with our office, Housing, Consumer, and Public Benefits Division specifically, during Fall 2022 semester. During Benjamin's externship, I was his immediate supervising attorney.

Over the course of his externship, Benjamin accepted various assignments from multiple attorneys. Through his management of multiple tasks, he made it apparent that he was more than capable of effectively managing his time and efficiently managing his given assignments. Such assignments included, but not limited to, legal research, fact investigation, legal analysis, client contact, legal drafting and accompanying attorneys to Court.

I am of strong opinion that Benjamin will be an asset to your firm/organization. Based upon Benjamin's work ethic as a law student extern, I firmly believe he is committed to being positively impactful to the legal profession. It is my pleasure to give him such recommendation.

With kind regards,  
LEGAL AID OF NORTHWEST TEXAS

/s/ *Keidra McGriff*  
Keidra McGriff  
Staff Attorney

*Bringing justice to North and West Texans since 1951*



**BENJAMIN M. GERZIK**

(he/him) ■ 5350 Amesbury Dr. Apt. 2008, Dallas, TX 75206 ■ (979) 450-2440 ■ bgerzik@smu.edu

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**Writing Sample**

This writing sample includes condensed portions of an internal memorandum I wrote for the early stages of a law review article authored by the Deason Center's director, Professor Metzger. She was interested in seeing whether or not the unique issue presented in the *Rosemond* case evaluated below was beginning to pan out in lower courts, so that she could tie it into a project involving the Sixth Amendment right to autonomy. Though the memorandum is only for an assessment of the law and does not have a factual background for application, later sections do compare facts with past and future applications of this law.

Substantial deletions in the brief are indicated with brackets and explanations when necessary. I also use footnote citations; I adopted these conventions from Professor Garner's Advanced Legal Writing course and my time at the Supreme Court of Texas, but am prepared to use any format required in chambers. If you would additionally prefer a sample of persuasive writing, I am happy to provide one upon request.

**MEMORANDUM**

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**The Trajectory of Rare Sixth Amendment Autonomy Rights Following *McCoy* and *Rosemond***

When a defendant objects to their counsel’s strategy, the Sixth Amendment provides four primary routes for relief. The three more traditional routes fall under ineffective assistance of counsel jurisprudence: (1) a standard *Strickland* or *Strickland*-hybrid two-prong analysis, depending on jurisdiction;<sup>1</sup> (2) the limited *Cronic* categories in which prejudice is presumptively created for *Strickland* purposes;<sup>2</sup> and (3) the *Nixon* allowance of counsel conceding guilt for an informed defendant, who neither explicitly assents to nor rejects the strategy, specifically in a capital trial.<sup>3</sup> The Supreme Court’s 2018 decision in *McCoy v. Louisiana* carved out a fourth route when a defendant vociferously, unambiguously objects to their counsel’s concession of guilt—a “fundamental choice[] about [their] own defense.”<sup>4</sup>

Though fact patterns involving a defendant’s objections to their counsel’s strategy will usually implicate all four cases, *McCoy* grounds its decision in a separate Sixth Amendment right to autonomy, not ineffective assistance of counsel.<sup>5</sup> The Second Circuit’s recent decision in *Rosemond* held that counsel conceding an element of a charged crime—not the defendant’s overall guilt—does not implicate the Sixth Amendment right to autonomy, even when the defendant explicitly objects to that strategy.<sup>6</sup> The precedent and trajectory of the law for such situations is unclear and unlikely to develop quickly, but some existing and pending cases may contextualize how courts will rule on similar facts in the future.

[A brief overview of *Strickland*, *Cronic*, and *Nixon*’s background law and the development leading to *McCoy* is omitted.]

*Rosemond* creates an interesting precedent in its application of Justice Alito’s dissent in *McCoy*.<sup>7</sup> Though the Second Circuit only mentions the dissent once, it cites it to support a limited reading of the majority’s opinion.<sup>8</sup> Because Alito’s dissent asserts from the facts that *McCoy* itself hinges on an element-stipulation issue, rather than a total admission of guilt, following courts will likely draw more support from it than they may a typical dissent.<sup>9</sup>

<sup>1</sup> See *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

<sup>2</sup> See *United States v. Cronic*, 466 U.S. 648, 659 (1984).

<sup>3</sup> See *Florida v. Nixon*, 543 U.S. 175, 178 (2004).

<sup>4</sup> See *McCoy v. Louisiana*, 138 S. Ct. 1500, 1511 (2018).

<sup>5</sup> See *id.* at 1503.

<sup>6</sup> *United States v. Rosemond*, 958 F.3d 111, 122 (2d Cir. 2020).

<sup>7</sup> See *id.* at 122 (citing *McCoy*, 138 S. Ct. at 1514 (Alito, J., dissenting)).

<sup>8</sup> *Id.*

<sup>9</sup> See *id.* at 1512.

On the rare case that they arise, any defendant appeals based on the element-stipulation issue will face a steep uphill battle, even outside of the Second Circuit *Rosemond* court.<sup>10</sup> Even if *Rosemond*'s ruling is not necessarily consistent with the autonomy principles underlying *McCoy*, *McCoy* does contain easily cited language pointing against the element-stipulation issue: the Court characterized the decision “whether to concede an element of a charged offense” as a “strategic dispute[],” not the sort of “intractable disagreement[] about the fundamental objective of the defendant’s representation” that would violate a defendant’s Sixth Amendment autonomy right.<sup>11</sup>

Justice Alito’s dissent in *McCoy* makes note of how rarely the right established under *McCoy* will appear “for many years to come,” because it is “effectively confined to capital cases”; few “rational” defendants will actively object to strategies that concede guilt to mitigate a death sentence; the right will only arise when the defendant objects to their attorney’s strategy but still retains them; a trial judge will “almost certainly grant a timely request to appoint substitute counsel” when such disagreement arises; and the right will only arise when the defendant expressly protests the concession strategy.<sup>12</sup> Alito notes further the even more rare element-stipulation issue: “the fact that [questions about stipulating elements over defendant’s objections] have not come up in this Court for more than two centuries suggests that they will arise infrequently in the future.”<sup>13</sup>

Because of the limited circumstances under which any *McCoy* right will arise, the especially limited circumstances under which an element-stipulation *McCoy* issue will arise, and the unusual applicability of Alito’s dissent, future courts dealing with the issue will have to take a challenging reading of *McCoy*’s autonomy right to assert it in element-stipulation cases. The cases below, though not all directly on point, provide some context for the potential development of this law.

### Cases Currently Pending Appeal

[This section addressed cases pending appeal at the time of writing that could potentially implicate this new issue, but the law remains largely undeveloped.<sup>14</sup> Since the time of writing, a handful of new cases have published with some bearing on the law, but they are within the Second Circuit.<sup>15</sup>]

<sup>10</sup> See, e.g., *Rosemond*, 958 F.3d at 121; *McCoy*, 138 S. Ct. at 1514–15 (Alito, J., dissenting).

<sup>11</sup> *McCoy*, 138 S. Ct. at 1510; see generally *Recent Case, Second Circuit Holds that Counsel Admitting to Element of Crime over Defendant’s Protests Does Not Violate Defendant’s Autonomy*, 134 HARV. L. REV. 1921, 1927 (2021).

<sup>12</sup> *McCoy*, 138 S. Ct. at 1514–15 (Alito, J., dissenting).

<sup>13</sup> *Id.* at 1517.

<sup>14</sup> See e.g., *State v. Froman*, 165 N.E.3d 1198, 1229 (Ohio 2020), *appeal docketed*, No. 20-7865, (U.S. Apr. 27, 2021); *Kellogg-Roe v. Warden*, No. 15-cv-116-PB, 2020 WL 1452159, at \*8 (D.N.H. Mar. 25, 2020) (unpublished slip op.), *appeal filed*, No. 20-1408 (1st Cir. Apr. 13, 2020); *Morris v. Pennsylvania*, Civil Action No. 15-1352, 2018 WL 5453585, at \*4 n.5 (E.D. Pa. Oct. 29, 2018), *appeal filed*, No. 18-3542 (3rd Cir. Nov. 26, 2018).

<sup>15</sup> See, e.g., *Zodhiates v. United States*, No. 14-CR-175-RJA, 2022 WL 3605957, at \*12 (W.D.N.Y. Aug. 23, 2022) (characterizing the decision to utilize an affirmative defense as “somewhere between the choices in *McCoy* . . . and *Rosemond*,” but closer to *Rosemond*); *Baker v. Superintendent, Coxsackie Corr. Facility*, No. 6:19-CV-6218, 2023 WL 203359, at \*11 (W.D.N.Y. Jan. 17, 2023) (citing *Rosemond* to hold that “defense counsel’s concession of an element of the crime is not necessarily unreasonable or prejudicial” in an ineffective assistance of counsel claim).

### Recent Caselaw Surrounding *McCoy* and *Rosemond*

*McCoy* and its progeny raise three primary issues for any defendant wishing to assert their right to autonomy by objecting to counsel's element stipulation. First, the defendant's objection must relate to a fundamental trial objective (e.g., innocence/guilt), which are narrowly defined.<sup>16</sup> Second, the defendant's objection must be "vociferous" or "intransigent and unambiguous" *during* the course of the case.<sup>17</sup> In addition to difficulties defining those levels of objection, this creates a situation where *the presumably legally uninformed defendant* must have the foresight to preserve the error through objection for an appeal, since their counsel is the one creating the difficulty. This directly counters the principal underlying this field of jurisprudence, which finds its justification in part on the necessity of a sophisticated lawyer to take care of their presumably unsophisticated client.<sup>18</sup> Finally, courts have been conflicted in their willingness to apply *McCoy* in non-capital cases.<sup>19</sup>

On account of these issues, a defendant wishing to assert their autonomy right based on their counsel conceding elements of their crime must (1) overcome the high bar of proving they objected to a fundamental trial objective; (2) make their objection sufficiently vociferous and have the foresight to preserve error; and (3) find themselves in a courtroom willing to extend *McCoy* to non-capital cases.

#### *a. What constitutes a fundamental objective or concession of guilt?*

*McCoy* itself is implicitly hostile to the element-stipulation issue, characterizing "whether to concede an element of a charged offense" as a "strategic dispute[]," not the sort of "intractable disagreement[] about the fundamental objective of the defendant's representation" that would violate a defendant's Sixth Amendment autonomy.<sup>20</sup> *Rosemond* tracks this logic closely, narrowly interpreting *McCoy*'s list of defendant-reserved decisions to "whether to plead guilty, waive the right to a jury trial, testify in one's own behalf, [] forego an appeal . . . [and] decide on the objective of his defense."<sup>21</sup> The last fundamental objective of defense category includes defendants "refusing to plead guilty in the face of overwhelming evidence . . . rejecting the assistance of counsel, and

<sup>16</sup> See *McCoy*, 138 S. Ct. at 1508.

<sup>17</sup> See *id.* at 1510; see also *Nixon*, 543 U.S. at 181.

<sup>18</sup> See *McCoy*, 138 S. Ct. at 1509 (citing MODEL RULES OF PRO. CONDUCT r. 1.2(a) (AM. BAR. ASS'N 2016)); see also Pamela R. Metzger, *Confrontation Control*, 45 TEX. TECH. L. REV. 83, 97, 88 (2012) (noting the Ninth Circuit presumes defendants have a CSI or Court TV level of knowledge regarding their rights, and otherwise, the Supreme Court presumes that "lawyers—not defendants—are best positioned to make correct judgments about . . . trial rights").

<sup>19</sup> See generally Samantha I. Astrich, *A Vociferous No Means No: How McCoy Mastered his own Defense and Reestablished the Right to Autonomy*, 93 TUL. L. REV. 1005, 1018 (2019).

<sup>20</sup> *McCoy*, 138 S. Ct. at 1510.

<sup>21</sup> *Rosemond*, 957 F.3d at 121 (citing *McCoy*, 138 S. Ct. at 1505, 1508) (internal quotations omitted).

insisting on maintaining [their] innocence at the guilt phase of a capital trial.”<sup>22</sup> Again, the *Rosemond* court seems to read this list as nearly exhaustive, paying little attention to the defendant’s argument regarding *McCoy*’s underlying principles.<sup>23</sup>

When counsel does not outright concede something as fundamental as guilt against their client’s objections, their actions may still amount to conceding guilt under certain circumstances.<sup>24</sup> The most authoritative example comes from *Read*, where the Ninth Circuit found that “an insanity defense is tantamount to a concession of guilt” when made against the defendant’s “clear objection,” qualifying as a structural error under *McCoy*.<sup>25</sup> It based its logic in analogizing a defendant choosing to “avoid the stigma of insanity” to the “opprobrium” the defendant in *McCoy* sought to avoid in a murder conviction.<sup>26</sup> It follows that other cases that effectively, but not explicitly, concede guilt can qualify under *McCoy*. Note that the *Rosemond* court rejected this logic when considering the opprobrium at an elemental, rather than absolute level; courts outside of the Second Circuit will have to decide whether they distinguish a defendant’s fear of stigma associated with a crime based on an elemental or total theory, as the *Rosemond* court did.<sup>27</sup>

North Carolina caselaw has taken a broader view of effective concession, holding in multiple cases that implicitly conceding guilt *merely without authorization* can constitute a presumptively prejudicial outcome under *Cronic*, even where there is no objection from the defendant.<sup>28</sup> Recent North Carolina jurisprudence still makes no note of *McCoy* (2020) or *Nixon* (2004) even in relevant cases, surprisingly. The North Carolina Supreme Court instead cites back to a method outlined in 1985 through its own case *Harbison*, as recently as 2020.<sup>29</sup> Notably, none of the cases *McAllister* cites in its broad survey of past *Harbison* decisions involve capital punishment: this is likely why it does not invoke *McCoy* or *Nixon*, although the Court does not say as much.<sup>30</sup> In one of these cases, *State v. Fisher*,<sup>31</sup> the North Carolina Supreme Court found that conceding the element of malice for a murder charge did *not* amount to a clear admission of guilt for *Harbison* purposes.

In *McAllister*, the North Carolina Supreme Court held that counsel implicitly admitting guilt to a charged offense during an argument to a jury, without the client’s prior consent (but also without

<sup>22</sup> *McCoy*, 138 S. Ct. at 1503 (citing *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1908 (2017)).

<sup>23</sup> See *Rosemond*, 958 F.3d at 123–24.

<sup>24</sup> See *United States v. Read*, 918 F.3d 712, 720 (9th Cir. 2019).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*; *McCoy*, 138 S. Ct. at 1504.

<sup>27</sup> See *Rosemond*, 958 F.3d at 123–24.

<sup>28</sup> See *State v. McAllister*, 847 S.E.2d 711, 617 (N.C. 2020); *State v. Harbison*, 337 S.E.2d 504, 507–08 (N.C. 1985); see also *Cronic*, 466 U.S. at 659.

<sup>29</sup> See *McAllister*, 847 S.E.2d at 456.

<sup>30</sup> See generally *McAllister*, 847 S.E.2d at 716–21 (recounting *Harbison* and ten valid past decisions following *Harbison* analysis, none of which were capital).

<sup>31</sup> 350 S.E.2d 334, 346 (N.C. 1986)

objection), was presumptively prejudicial under *Harbison*.<sup>32</sup> The counsel in this case’s statements were “the functional equivalent of an outright admission of the defendant’s guilt” when counsel asked the jury to find the defendant not guilty of every offense *except* for an assault on a female charge.<sup>33</sup> Counsel had additionally affirmed the veracity of defendant’s statements in an interview, which confirmed all of the elements of this charge.<sup>34</sup> The opinion says nothing of conceding only some elements, but the implied concession of *all* elements to a charged offense sufficed as the functional equivalent to conceding guilt.<sup>35</sup>

In the Wisconsin Supreme Court, which considered *McCoy* explicitly, there was no *McCoy* concession of guilt when counsel told the jury they “should consider” second-degree reckless homicide.<sup>36</sup> This effectively conceded all elements of the first-degree reckless homicide charge *except* for the additionally required element of “utter disregard for human life.”<sup>37</sup> The Court held that there was no *McCoy* violation, effectively (but not explicitly) holding that conceding every element but one did not constitute a concession of guilt under *McCoy*.<sup>38</sup>

In Texas, the Court of Criminal Appeals recently found that a defendant did not assert a defense objective of maintaining innocence at trial when he (quite emphatically) “told various people, including his attorneys,” that he was innocent, would not plead guilty, and would “rather be executed” than plead guilty.<sup>39</sup> This did not suffice as an explicit assertion of a defense objective under *McCoy* when his counsel went on to concede his total guilt: “these facts demonstrate that [defendant] told his attorneys that he was innocent; they do not demonstrate that he told them that his defensive objective was to maintain his innocence at trial.”<sup>40</sup> This shows the *extremely* high bar some courts will take for the assertion of defense objectives under *McCoy*, even for total concessions of guilt; the bar for specific element-stipulation will likely be even higher.<sup>41</sup>

Within the same week of *Barbee*’s decision, the Western Division of New York held that “while in hindsight, it seemed extraordinary to concede to crucial elements of the case, it was a reasonable trial strategy” that did not suffice for an ineffective assistance of counsel claim.<sup>42</sup> The crucial elements counsel conceded in this case were the defendant’s presence at the crime scene and that relevant DNA evidence belonged to the defendant, in the context of assault and attempted rape

<sup>32</sup> *McAllister*, 847 S.E.2d at 723.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 724.

<sup>35</sup> *See id.* at 723.

<sup>36</sup> *State v. Chambers*, 955 N.W.2d 144, 146 (Wis. 2021).

<sup>37</sup> *Id.* at 150.

<sup>38</sup> *See id.* at 149–50.

<sup>39</sup> *Ex parte Barbee*, 616 S.W.3d 846, 845 (Tex. Crim. App. 2021).

<sup>40</sup> *Id.*

<sup>41</sup> *See id.*

<sup>42</sup> *Parker v. Graham*, No. 18-CV-6106L, 2021 WL 402406, at \*8 (W.D.N.Y. Feb. 5, 2021) (citing *Bierenbaum v. Graham*, 607 F.3d 36, 52 (2d Cir. 2010) (internal quotations omitted)).

charges.<sup>43</sup> However, this case follows a standard *Strickland* analysis and makes no mention of *McCoy*.<sup>44</sup> This may again be because the case is non-capital, but the court does not provide any clarity.

Preceding *McCoy* and addressing the specific context of *Boykin-Tahl* waivers, the Supreme Court of California held in 1995 that “trial counsel’s decision not to contest, and even expressly to concede, guilt on one or more charges at the guilt phase of a capital trial is not tantamount to a guilty plea.”<sup>45</sup> This does not speak directly to an effective concession of guilt, but rather a guilty plea.<sup>46</sup> However, it does show that a California case based on *McCoy* may encounter more friction than in other jurisdictions. *Cain* does address an ineffective assistance of counsel claim, noting that “the record does not demonstrate counsel ignored any express wish on defendant’s part to present an active defense.”<sup>47</sup> This again does not speak specifically to the concessions considered in *McCoy*, but shows California’s probable resistance to a potential autonomy claim.<sup>48</sup>

In the Alabama Court of Criminal Appeals (a lower court than the Alabama Supreme Court, unlike in Texas), the court found “as a matter of first impression” that defense counsel must present “to the jury a defense that is tantamount to a concession of guilt” to qualify under *McCoy*, which was not the case in that case.<sup>49</sup> This case does not explicitly involve element stipulation, but rather the defendant’s desire to “pursue a theory of absolute innocence rather than a theory of self-defense.”<sup>50</sup> The desire not to concede self-defense does implicate the stipulation of elements—since it necessitates conceding the element of killing someone, contrary to absolute innocence—but this case instead focuses on the fact that counsel did not make any concession in the jury’s presence.<sup>51</sup> It also goes to show the creative application lower courts may take of *McCoy* given its inconsistency.

In conclusion, very little is said of explicit element-stipulation under *McCoy* outside of *McCoy* itself and *Rosemond*, but the survey of cases above shows how courts generally set a quite high bar for any concession of guilt. Even concession of total, outright guilt faces a difficult challenge, and element-stipulation claims will likely face an even more difficult fight.

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<sup>43</sup> *Id.*

<sup>44</sup> *See id.* at \*6.

<sup>45</sup> *People v. Cain*, 892 P.2d 1224, 1241 (Cal. 1995) (en banc).

<sup>46</sup> *See id.*

<sup>47</sup> *Id.* (internal quotations omitted).

<sup>48</sup> *See id.*

<sup>49</sup> *Morgan v. State*, No. Cr-18-0169, 2020 WL 2820172, at \*1 (Ala. Crim. App. May 29, 2020) (unpublished opinion) (emphasis original).

<sup>50</sup> *Id.* at \*4.

<sup>51</sup> *Id.* at \*1.

*b. What constitutes a “vociferous” objection to counsel’s actions?*

Little express definition exists of a vociferous or unambiguous, intransigent objection under *McCoy*, but some courts have taken creative opinions of it in both directions.<sup>52</sup> On balance, though, the trend points to a need for truly explicit objection, as some cases below do not allow for constructive objections, even when the language at hand is quite powerful.

*Rosemond* does put stock into the “opprobrium” consideration underlying *McCoy*, but holds it to a high, almost categorical bar.<sup>53</sup> The opprobrium the defendant feared in *Rosemond* was specifically for the murder-for-hire charge, not for a paid kidnapping charge—the court did not accept this and looked instead for a uniform fear of opprobrium across all crimes.<sup>54</sup> The Second Circuit suggested that the defendant’s argument “might carry more weight” if he asserted his autonomy by objecting to the concession of “*any* crime because of the opprobrium” accompanying it.<sup>55</sup> Under this logic, vociferous objections must carry a full-throated fear of opprobrium related to the crime, not just selected elements or charges.

Yet, in Texas, the Court of Criminal Appeals still found that a defendant’s vocal and passionate expressions of a desire to prove innocence did *not* constitute a vociferous objection to counsel under *McCoy*.<sup>56</sup> The defendant “told various people, including his attorneys, that he was innocent”; that he “would not plead guilty, and [that someone else] killed [the victims]; that “he told the forensic psychiatrist that he would rather be executed than have his mother see him plead guilty”; and complained to the trial court about a “breakdown in communication” with his attorneys.<sup>57</sup> Yet, still, the Court found that the defendant did not “object to the defense strategy.”<sup>58</sup> His wishes for his mother not to see him plead guilty are especially poignant when considering the type of opprobrium cited in *McCoy*.<sup>59</sup>

Where these quotations are cited in the opinion, the Court makes no reference to a standard for vociferous or unambiguous objection.<sup>60</sup> However, this strongly implies that even such powerfully constructive objections to trial strategy do *not* suffice as vociferous under *McCoy*.<sup>61</sup> It may be the case that they did not constitute a vociferous objection because counsel never made his concession

<sup>52</sup> See *Rosemond*, 958 F.3d at 124; *Chambers*, 955 N.W.2d at 150 n.8; *Barbee*, 616 S.W.3d at 845; *Harris v. State*, 856 S.E.2d 378, 383 (Ga. Ct. App. 2021).

<sup>53</sup> See *Rosemond*, 958 F.3d at 124.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* (internal citations omitted) (emphasis added).

<sup>56</sup> See *Barbee*, 616 S.W.3d at 845.

<sup>57</sup> See *id.* at 845.

<sup>58</sup> *Id.* at 841.

<sup>59</sup> See *id.* at 845; *McCoy*, 138 S. Ct. at 1504.

<sup>60</sup> See *Barbee*, 616 S.W.3d at 845.

<sup>61</sup> See *id.*

strategy known: the defendant was “shocked” when he heard counsel’s argument and “his attorney did not explicitly tell him that [the] closing argument would concede [the defendant’s identity as the killer].”<sup>62</sup> However, the Court does not explicitly address this either, and no relief under *McCoy* was granted.<sup>63</sup> If this is the case, a defendant may never have autonomy, even over basic trial strategies, even with what would seem to be constructively vociferous objections, so long as their counsel simply does not articulate a strategy for the defendant to object to.

In a lower court case, the Court of Appeals of Georgia found that even a plea of not guilty does not equate to an “intransigent and unambiguous objection” when it contradicts counsel’s later concession strategy.<sup>64</sup> The defendant’s counsel totally conceded his guilt of a methamphetamine charge without informing the defendant, but after the defendant pleaded not guilty to the charge.<sup>65</sup> The court cited *Nixon*’s rule giving counsel free reign when a defendant neither accedes nor objects to a trial strategy.<sup>66</sup> The court, perhaps incorrectly, did not note that *Nixon* requires a defendant to be informed of the strategy, nor that *Nixon* typically applies only to capital cases.<sup>67</sup> Regardless, it found that a not guilty plea does not suffice as a vociferous *McCoy* objection, precluding the defendant from the autonomy claim.<sup>68</sup>

In conclusion, the bar set for a vociferous or unambiguous, intransigent objections under *McCoy* is high and—ironically—quite ambiguous. Courts have been generally unsympathetic to constructive objections and seem to demand explicit objections. However, the lack of clear definition may lead courts (like the Wisconsin Supreme Court) to apply creative standards in the future for *McCoy* objections, but this seems to run against the trend.<sup>69</sup>

*c. Who is willing to apply McCoy to non-capital cases and how?*

[A section based mostly on inferences and lower court rulings<sup>70</sup> is omitted, as is the overall conclusion section and proposal for future research questions.]

<sup>62</sup> *Id.* at 845 (internal quotations omitted).

<sup>63</sup> *Id.*

<sup>64</sup> *Harris*, 856 S.E.2d at 383 (citing *McCoy*, 138 S. Ct. at 1507).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *See id.*; *Nixon*, 543 U.S. at 178.

<sup>68</sup> *See Harris*, 856 S.E.2d at 383.

<sup>69</sup> *See Chambers*, 955 N.W.2d at 150 n.8.

<sup>70</sup> *See, e.g., Harris*, 856 S.E.2d at 383 n.7 (“We assume without deciding that *McCoy* is not limited to capital cases.”) (citing *Rosemond*, 322 F. Supp. 3d at 486).

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 Law Review/Journal **Yes**  
 Journal(s) **Mississippi Sports Law Review**  
 Moot Court Experience **No**

**Bar Admission**

## Prior Judicial Experience

Judicial Internships/Externships	Yes
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January 25, 2023

The Honorable Irma Ramirez  
U.S. District Court | Northern District of Texas  
1100 Commerce Street | Room 1567  
Dallas, Texas 75242

Dear Judge Ramirez:

I am seeking placement as your **Two Year Term Law Clerk** from **August 2023 to August 2025**. In May of 2022, I received a Juris Doctor degree centering around business and transactional law and served as the Editor-in-Chief of *The Mississippi Sports Law Review*. My primary intersecting legal interests include ***business and real estate law, civil litigation, employment and labor law, consumer protection, bankruptcy, regulatory compliance, and transactional law***. As a second-career professional, I intentionally align with legal experiences that will cultivate my future legal career and advocacy. Receiving placement as a term law clerk aligns with my goals of successfully gaining broader analytical skills that will add vigor to my primary legal interests and professional background.

Recently, in the Spring of 2022, I served as a Judicial Extern and Law Clerk for the Eighth District Court of Appeals in Ohio under the leadership of the Honorable Emanuella Groves. As a judicial extern and law clerk, I analyzed intricate legal issues involving contracts, bad faith claims, and violations of constitutional rights. In addition, my writing and research skills were consistently enhanced during the drafting of weekly bench memoranda, preparing judicial opinions, and reviewing formal agency adjudication transcripts for abuses of discretion or procedural errors affecting a party's substantive and procedural rights.

During the Fall of 2020 and Summer of 2021, I completed my second tenure at Littler Mendelson P.C. as a Summer and Fall Law Clerk. Throughout the clerkship, I executed a significant amount of legal research and written analysis on federal and state court decisions surrounding traditional labor law disputes, comparator discrimination matters, and complex litigation issues involving wage and salary disparities. I also worked extensively on issues focusing on employment contracts and reverse discrimination. In addition, I worked closely with attorneys drafting various motions, summary judgments, and position statements for the Equal Employment Opportunity Commission (EEOC).

In the Summer of 2019, I completed a second summer with the USDA in Washington, DC, as a FOIA Analyst/Legislative and Public Affairs Intern. As a FOIA Analyst, I increased my writing and legal analysis skills by writing legal memoranda on PETA litigation and animal abuse issues. The highlight of the internship includes finding a legal exception for pending litigation against the (USDA). The exception resulted in a prior vacated precedent. The U. S. Supreme Court later upheld this narrow exception in June of 2019 resulting in a favorable judgment for the USDA.

In addition to working at the USDA, I completed a spring externship in 2019 with the Texas House of Representatives under the Honorable Garnet Coleman. During the externship, I was promoted to Committee Clerk for the Standing House Committee on County Affairs. In this role, I analyzed and conducted research on legislative bills assigned to the committee and advised the committee chair on regulatory matters, public policy issues, and house bills that should receive a legislative/committee hearing.

In closing, I am confident that my legal experience and professional background will serve as an asset to your chambers. I am enclosing my resume and all other required documents for your review. Should you need any additional information, please feel free to reach me at 202-808-6140 or [BCGrande@go.olemiss.edu](mailto:BCGrande@go.olemiss.edu). I look forward to hearing from you and setting up an interview in the near future.

Respectfully,

Brandi C. Granderson  
Enclosures

# Brandi Granderson

(Cell) 202-808-6140 | Email: [BCGrande@go.olemiss.edu](mailto:BCGrande@go.olemiss.edu)

Professional Links: [Top 40 Under 40 Feature](#) | [LinkedIn Profile \(Click Here\)](#)

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## **BAR ADMISSION:** Tennessee (February, 2023)

## **PROFESSIONAL AND LEADERSHIP AWARDS:**

- Thurgood Marshall Leadership Institute Scholar – Spring 2018 to Fall 2020
- 2013 Mississippi Business Journal Top 40 Under 40 Awardee for The State of Mississippi
- 25<sup>th</sup> Year Distinguished Alumni Honoree – Clark Atlanta University – 2013

## **LAW REVIEW PUBLICATIONS: SUBMITTED JOURNAL ARTICLES:**

- Brandi Granderson, Note, *Labor Law-Collective Bargaining-Antitrust-Social Justice / Beethoven's Symphony No.5 of Sports*, 11 MISS. SPORTS L. REV. J., (2022).

## **EDUCATION:**

**University of Mississippi School of Law | Oxford, MS | Juris Doctor - May 2022**

**G.P.A.: 3.21/4.00 (Transfer Student)**

- Phi Delta Phi Award (May 2022)
- Editor-in-Chief – Mississippi Sports Law Review Journal | Volume 11 (2021-2022) | Staff Editor (2020-2021)
- Awarded – Outstanding Student Organization President Leadership & Engagement Award – Spring 2021
- Student Appointee – Best Practices and Curriculum Committee
- (Member) Government Law Student Association (GLSA) | OUTLaw (LGBTQ+ Law Society | Allied Member)
- Delta Theta Phi Law Fraternity (Honor Society) | BLSA (Black Law Student Association)
- Research | Teaching Assistant – Civil Procedure I & II – (2018) – (Southern University Law Center)
- LSU Law Center Advocacy Program - Certificate of Completion (Civil Litigation Skills–Fit to Practice) – Spring 2018

**Jackson State University – Jackson, MS | Master of Business Administration – Management – May 2013**

**G.P.A.: 3.4/4.00 (High Honors)**

- MBA China Initiative Program Representative - Fall 2013 - Asia (Nanjing, China)

**Clark Atlanta University – Atlanta, GA | B.A. Business Administration (Marketing)**

**Magna Cum Laude – May 2001 | G.P.A.: 3.5/4.00**

- Dean's List (1996 – 2001 - 10 Consecutive Semesters) | General Motors Scholar – (1996-2001)

## **LEGAL EXPERIENCE:**

**Eighth District Court of Appeals–State of Ohio**

**January 2022 – May 2022**

**Honorable Judge Emanuella Grove**

**Judicial Extern**

- Analyzed state statutory administrative law, legislation, and case law surrounding land valuation methods, Arm's Length Transactions, and property taxes for real property civil proceedings.
- Drafted weekly bench memoranda covering various legal topics and conducted legal analysis surrounding regulatory takings and trial court criminal procedure errors.
- Reviewed trial court manuscripts and formal agency adjudication transcripts for abuse of discretion, credibility, and sufficiency of the evidence or errors affecting the substantial rights of either party.
- Researched and analyzed complex legal issues involving contracts and violations of constitutional rights.
- Consulted with the Senior Judicial Attorney and Judge offering recommendations on legal cases.

**Littler Mendelson**

**August 2020 – July 2021**

**National Bar Association Commercial Law Minority Program**

**Employment and Labor Law | Compliance**

**Fall & Summer Associate - Remote**

- Assisted with complex litigation legal research, prepared post-hearing briefs, and participated in collective bargaining agreement negotiations.
- Created a Commercial Construction Survey with an in-depth analysis of state and federal laws surrounding prevailing wage rates and the U.S. Department of Labor regulatory and compliance standards under the Davis-Bacon Act.
- Researched and prepared a legal guidance pamphlet detailing the Department of Labor adjudications intersecting with traditional labor law issues involving unions, government contracts, and contractual bids.

*Page 2 - Littler Mendelson – Work Experience Continued*

- Conducted legal analysis on federal and state gaming law issues surrounding employee and employer sweepstakes.
- Reviewed and classified evidence for Plaintiff and Defendant during discovery with a chronological timeline of the evidence in preparation for depositions and trial.
- Interpreted various state laws surrounding employee contracts, federal and state court rulings, and regulations centering on Age Discrimination (ADEA), Wage and Hour, Retaliation, Discrimination and Harassment, and Workers' Compensation.
- Created a case law analysis chart spanning over 20 years with detailed rulings surrounding Title VI and VII, Affirmative Action, and Hiring/Performance Management.
- Prepared legal memoranda and assisted with motions for summary judgment, motions to dismiss, and discovery motions.

**Transactional Law Clinic – Oxford, Mississippi**

**January 2021 – April 2021**

**University of Mississippi School of Law**

*Student Attorney (Limited Practice – State of Mississippi)*

- Drafted non-disclosure agreements surrounding intellectual property matters for Limited Liability Companies.
- Assisted with the legal creation of nonprofit corporations and provided supervised legal counsel on compliance and regulatory matters regarding charities and governance by the Secretary of State and the Office of the Attorney General.
- Interpreted and evaluated Internal Revenue Service regulations and tax guidance on income and donor legal matters for charities and nonprofits.
- Recommended the proper filing of tax forms in compliance with federal, local, and state authorities.

**Thurgood Marshall College Fund – Washington, D.C.**

**June 2019 – August 2019**

**USDA-APHIS (Animal and Plant Health Inspection Service)**

*FOIA Analyst / Legislative and Public Affairs Law Clerk II*

- Evaluated appealed agency decisions from FOIA requesters and agency licensees.
- Composed legal memoranda for complex agency litigation and department employee grievances.
- Recommended final opinion decisions to the FOIA Assistant Director for approval by the Office of General Counsel.

*Legislative and Public Affairs Law Clerk I*

**June 2018 – August 2018**

- Recognized by the FOIA Department Director for outstanding contributions surrounding case law research, in-depth analysis, and preparing FOIA appeal responses for the Office of General Counsel
- Prepared FOIA appeal responses for the Office of General Counsel.
- Drafted and edited formal responses to FOIA correspondence after conducting research on applicable statutes and case law.
- Provided in-depth analysis on pending, complex FOIA cases and initial analysis of submitter objections.
- Redacted documents per FOIA protocols, including annotating appropriate FOIA exemptions on records.

**Texas House of Representatives – Austin, TX**

**Representative Garnet Coleman**

*Legislative and Committee Policy Analyst*

**January 2019**

*Committee Clerk / House Committee of County Affairs*

**February 2019 – May 2019**

- Promoted within three weeks to Committee Clerk for one of Twelve Standing House Committees.
- Assisted the Chief of Staff and Committee Director with legislative and fiscal impact analysis to determine policy positions for committee hearings and bill passage strategy.
- Drafted talking points and official correspondence regarding state legislation and tracked legislation floor and committee movements.
- Represented the Representative in meetings and briefings with constituents and advocacy groups.
- Assisted the Director of Communications with newsletter edits and communication strategy plans.

**PROFESSIONAL MEMBERSHIPS & COMMUNITY INVOLVEMENT**

- National Bar Association (NBA) – Student Member (Women's Lawyer Division & Commercial Law)
- American Bar Association (ABA) – Student Member
- Member – Delta Sigma Theta Sorority, Inc. (Alumnae Chapter)
- Member – Leadership Greater Jackson Alumni | Junior League of Jackson and Atlanta
- Co-Chair – Legal & Public Policy Education Committee - Youth Leadership of Greater Jackson

Brandi Granderson

Transcript Addendum - File Contents (2 LAW SCHOOL TRANSCRIPTS)

The current document serves as a Transcript Addendum explaining the contents within the packet. The document provides an explanation of any information or documents directly or indirectly relating to Brandi Granderson's final law school transcript from her graduating institution and prior law school academic transcripts.

### **1. Explanation of Z-Credits and P Grades on Transcripts**

P Credit courses at Southern University Law Center are for Pass/Fail classes. Z- credits or P grades are given by the University of Mississippi School of Law during the Covid-19 Nationwide Pandemic Isolation Period or given for classes that are designated as skill level classes for the student.

### **2. Explanation of (W's) During Fall 2017 and Spring 2018**

During both academic semesters, I withdrew from specific classes to commute to another state to take care of a parent with declining health.

EXPLANATORY LEGEND AND AUTHENTICITY STATEMENT APPEAR ON REVERSE SIDE

# SOUTHERN UNIVERSITY LAW CENTER OFFICIAL RECORD -- OFFICE OF THE REGISTRAR

Not valid without impression seal of SULC affixed, Registrar's signature and \*\* END OF TRANSCRIPT RECORD \*\* as final statement

STUDENT NAME: Granderson, Brandi C.  
STUDENT NO: 0  
UNDERGRADUATE SCHOOL: CLARK ATLANTA UNIVERSITY;  
SULC ADMISSION DATE: 8/3/2017

CURRENT STATUS:  
JD DEGREE AWARDED:  
HONORS:

## \*\*\*\*\* S. U. L. C. COURSE WORK \*\*\*\*\*

Dept.	Course Number	Sec.	Course Title	Semester Hours	Grade	Earned Hours	Grad Credit	Grade Points
**** Southern University ****								
***** Fall 2017 *****								
Law	402	3	CONTRACTS	3.0	W	0.0	0.00	0.00
Law	406	3	FAMILY LAW	3.0	W	0.0	0.00	0.00
Law	407	3	Basic Civil Procedure	3.0	A-	3.0	3.00	11.25
Law	421	3	LEGAL WRITING I	2.0	C-	2.0	2.00	3.50
Law	429	8	Lawyering Process I	2.0	P	2.0	0.00	0.00
Law	400	3	TORTS I	3.0	A-	3.0	3.00	11.25
				16.0		10.0	8.00	26.00
				CUM. HOURS =		10.0		
							TERM GPA =	3.25
							GPA =	3.25

**** Southern University ****								
***** Spring 2018 *****								
Law	408	10	LEGAL RESEARCH	2.0	B	2.0	2.00	6.00
Law	404	3	CRIMINAL LAW	3.0	C-	3.0	3.00	5.25
Law	415	3	CIVIL LAW-PROPERTY	3.0	D+	3.0	3.00	4.50
Law	417	4	OBLIGATIONS	3.0	W	0.0	0.00	0.00
Law	422	3	LEGAL WRITING II	2.0	B-	2.0	2.00	5.50
Law	401	3	TORTS II	2.0	B-	2.0	2.00	5.50
				15.0		12.0	12.00	26.75
				CUM. HOURS =		22.0		
							TERM GPA =	2.2292
							GPA =	2.6375

D'Andrea J. Lee  
Director, Records and Registration

SULC 5/31/2019 Granderson, Brandi C.

Page 1 of 2

In accordance with the Family Educational Rights and Privacy Act of 1974, as Amended, this document may not be released to others without the written consent of the student.

TO VERIFY: TRANSLUCENT GLOBES MUST BE VISIBLE FROM BOTH SIDES OF TRANSCRIPT WHEN HELD TOWARD A LIGHT SOURCE

EXPLANATORY LEGEND AND AUTHENTICITY STATEMENT APPEAR ON REVERSE SIDE

Dept.	Course Number	Sec. Number	Course Title	Semester Hours	Grade	Earned Hours	Grad Credit	Grade Points
**** Southern University ****								
***** Fall 2018 *****								
Law	402	1	CONTRACTS	3.0	B-	3.0	3.00	8.25
Law	414	2	CONSTITUTIONAL LAW I	3.0	F	0.0	3.00	0.00
Law	812	1	Labor & Employment Law	3.0	A	3.0	3.00	12.00
				9.0		6.0	9.00	20.25
						TERM GPA =	2.25	
				CUM. HOURS =	28.0	GPA =	2.5172	

**** Southern University ****								
***** Spring 2019 *****								
LAW	L943	1	Externship II	12.0	P	12.0	0.00	0.00
				12.0		12.0	0.00	0.00
						TERM GPA =	0	
				CUM. HOURS =	40.0	GPA =	2.5172	

**GRADING SYSTEM**  
Effective August 2007

A (96 - 100 = 4.0 pts.)  
A- (90 - 95 = 3.75 pts.)  
B+ (87 - 89 = 3.5 pts.)  
B (83 - 86 = 3.0 pts.)  
B- (80 - 82 = 2.75 pts.)  
C+ (77 - 79 = 2.5 pts.)  
C (73 - 76 = 2 pts.)  
C- (70 - 72 = 1.75 pts.)  
D+ (67 - 69 = 1.5 pts.)  
D (63 - 66 = 1.0 pts.)  
D- (60 - 62 = .75 pts.)  
F (below 60) = .00 pt.)

**GRADING SYSTEM**  
Effective August 1991

A (90 - 100 = 4 pts.)  
B+ (85 - 89 = 3.5 pts.)  
B (80 - 84 = 3 pts.)  
C+ (75 - 79 = 2.5 pts.)  
C (70 - 74 = 2 pts.)  
D+ (65 - 69 = 1.5 pts.)  
D (60 - 64 = 1.0 pts.)  
F ( 0 - 59) = 0 pt.)

**OTHERS**

P Passing  
I Incomplete  
W Withdrawal  
WF Withdrawal failure

Southern University Law Center - Not an Official Transcript Without School Seal. Unless Specified, The Student is Entitled to Honorable Dismissal.

*D'Andrea J. Lee*

Director, Records and Registration

Date

\*\*\*\*\* END OF TRANSCRIPT RECORD \*\*\*\*\*

*D'Andrea J. Lee*

D'Andrea J. Lee  
Director, Records and Registration

SULC 5/31/2019

Granderson, Brandi C.

428-73-7857

Page 2 of 2

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TO VERIFY: TRANSLUCENT GLOBES MUST BE VISIBLE FROM BOTH SIDES OF TRANSCRIPT WHEN HELD TOWARD A LIGHT SOURCE

## Issued to Student

**Name:** Granderson, Brandi C  
**Student ID:** 10792189  
**SSN:** \*\*\*\*\*7857  
**Birthdate:** 07/22/\*\*\*\*  
**Address:** 170 Somerset Drive  
 Jackson, MS 39206

Any questions regarding the accuracy of this transcript can be directed to the Office of the University Registrar. All transfer work is reflected in hours earned. Only course work attempted at the University of Mississippi is posted on the official transcript.

The educational record is subject to the Family Educational Rights and Privacy Act of 1974, as amended. This record is furnished for official use only and may not be released to or accessed by outside agencies or third parties without the written consent of the student concerned.

Print Date: September 05, 2022

### ----- Academic Program -----

**Current Program::** Juris Doctor

**College/School:** School of Law

Major - Juris Doctor Law

### ----- Degrees Awarded -----

**Date:** May 07, 2022

**Degree:** Juris Doctor

Major - Juris Doctor Law

### ----- Transfer Credit -----

**Name**

**Dates of Attendance**

Southern University & A&M College

08/03/2017 - 05/15/2019

### ----- Beginning of Records -----

#### Fall Semester 2019

##### Law

<u>Course</u>	<u>Description</u>	<u>Attempt</u>	<u>Grade</u>
Law 600	Evidence	3.00	B-
Law 603	Legal Profession	3.00	C
Law 601	Corporations	3.00	B-
Law 605	Administrative Law	3.00	D+
SEM: ATM 12.00	ERN 12.00	GRD 12.00	PTS 26.10 GPA 2.17
CUM: ATM 12.00	ERN 12.00	GRD 12.00	PTS 26.10 GPA 2.17

#### Spring Semester 2020

##### Law

<u>Course</u>	<u>Description</u>	<u>Attempt</u>	<u>Grade</u>
Law 507	Constitutional Law I	3.00	P
Law 504	Property	4.00	P
Law 577	Civil Procedure II	3.00	P
Law 558	Bankruptcy	3.00	P
SEM: ATM 13.00	ERN 13.00	GRD 0.00	PTS 0.00 GPA
CUM: ATM 25.00	ERN 25.00	GRD 12.00	PTS 26.10 GPA 2.17

#### Full Summer Session 2020

##### Law

<u>Course</u>	<u>Description</u>	<u>Attempt</u>	<u>Grade</u>
Law 635	Criminal Procedure I: Investigation	3.00	B+
Law 516	Wills and Estates	3.00	A
Law 744	Law and Film	3.00	A
SEM: ATM 9.00	ERN 9.00	GRD 9.00	PTS 33.90 GPA 3.76
CUM: ATM 34.00	ERN 34.00	GRD 21.00	PTS 60.00 GPA 2.85

#### Fall Semester 2020

##### Law

<u>Course</u>	<u>Description</u>	<u>Attempt</u>	<u>Grade</u>
Law 646	Children In The Legal System	3.00	B+
Law 647	Sports Law I (Intercollegiate Sports)	3.00	A
Law 580	Intellectual Property	3.00	Z
Law 657	Copyright Law	3.00	B-
Law 611	Sports Law Review	1.00	Z
SEM: ATM 13.00	ERN 13.00	GRD 9.00	PTS 30.00 GPA 3.33
CUM: ATM 47.00	ERN 47.00	GRD 30.00	PTS 90.00 GPA 3.00

## Issued to Student

**Name:** Granderson, Brandi C  
**Student ID:** 10792189  
**SSN:** \*\*\*\*\*7857  
**Birthdate:** 07/22/\*\*\*\*  
**Address:** 170 Somerset Drive  
 Jackson, MS 39206

Any questions regarding the accuracy of this transcript can be directed to the Office of the University Registrar. All transfer work is reflected in hours earned. Only course work attempted at the University of Mississippi is posted on the official transcript.

The educational record is subject to the Family Educational Rights and Privacy Act of 1974, as amended. This record is furnished for official use only and may not be released to or accessed by outside agencies or third parties without the written consent of the student concerned.

### Spring Semester 2021

#### Law

Course	Description	Attempt	Grade
Law 571	Secured Transactions	3.00	B+
Law 661	Gaming Law	3.00	A
Law 725	Clinics: Transactional	3.00	A
Law 709	Entertainment Law	3.00	Z
Law 755	Sports Law II (Professional Sports)	3.00	A
SEM: ATM 15.00	ERN 15.00	GRD 12.00	PTS 45.90
CUM: ATM 62.00	ERN 62.00	GRD 42.00	PTS 135.90
			GPA 3.82
			GPA 3.23

### Spring Semester 2022

#### Law

Course	Description	Attempt	Grade
Law 615	Individual Study I	1.00	Z
Law 704	Selected Legal Topics IV	3.00	C
Law 654	Clinics: Externship	3.00	Z
Law 663	Immigration Law	3.00	A-
Law 611	Sports Law Review	1.00	Z
SEM: ATM 11.00	ERN 11.00	GRD 6.00	PTS 17.10
CUM: ATM 92.00	ERN 92.00	GRD 65.00	PTS 209.00
			GPA 2.85
			GPA 3.21

Law 704: Real Estate

### Full Summer Session 2021

#### Law

Course	Description	Attempt	Grade
Law 699	Interviewing and Counseling	3.00	A
Law 735	White Collar Crime	3.00	A-
Law 771	Advanced Legal Topics I	1.00	Z
SEM: ATM 7.00	ERN 7.00	GRD 6.00	PTS 23.10
CUM: ATM 69.00	ERN 69.00	GRD 48.00	PTS 159.00
			GPA 3.85
			GPA 3.31

----- End of Transcript -----

### Fall Semester 2021

#### Law

Course	Description	Attempt	Grade
Law 508	Constitutional Law II	3.00	C
Law 662	Political and Civil Rights	3.00	B
Law 698	Legal Topics I	3.00	B+
Law 611	Sports Law Review	1.00	Z
Law 591	Bar Exam Skills	2.00	A
SEM: ATM 12.00	ERN 12.00	GRD 11.00	PTS 32.90
CUM: ATM 81.00	ERN 81.00	GRD 59.00	PTS 191.90
			GPA 2.99
			GPA 3.25

January 25, 2023

The Honorable Irma Ramirez  
Earle Cabell Federal Building and  
United States Courthouse  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez:

I am writing as an academic reference on behalf of Brandi Granderson, a third-year student at the University of Mississippi School of Law. Brandi is applying for a clerkship position in your chambers. As Brandi possesses both the academic and personal qualities that would make her an ideal judicial clerk, I enthusiastically support her application without reservation.

I have had the pleasure of teaching Brandi in both of my sports law classes, in which she made grades of A, one of which won the award for the highest grade in the class. I also serve as the academic advisor to the Mississippi Sports Law Review of which Brandi is the editor-in-chief. As a result, I know her abilities quite well.

Academically, Brandi is top notch. She possesses a quick mind and sharp analytical skills, which have placed her among the top students in her class. What sets Brandi apart from almost all the other law students that I have taught in over a decade of law teaching is the level of intellectual curiosity and attention to detail that are reflected in her work. She is not easily satisfied, and as a result, asks penetrating and thoughtful questions that help her to gain a deeper, more thorough understanding of the legal issue she is tackling. In addition, she is a careful thinker, and consistently considers all of the implications of different lines of thought, rather than simply choosing the most obvious approach.

Her work in editing and supervising the production of the Mississippi Sports Law Review has been simply outstanding. Her writing ability and eye for detail is evident in the way that she has improved the quality of the articles of faculty, practitioners, and fellow students. Her team has published more pieces of academic writing than any other editorial board in the twelve-year history of the journal. Based on her work on the Mississippi Sports Law Review, I am confident Brandi would have no problem drafting bench memos or preliminary opinions that are precise and transparent.

Also evident in her time as editor-in-chief has been Brandi's unusual work ethic. She has planned and executed multiple academic conferences with top lawyers and academics in the past two years. Indeed, she is someone who works hard on the task she is pursuing, and follows through in a timely manner with a superior work product.

In addition to the many outstanding academic attributes that Brandi possesses, she has a wonderful personality that would bring life to any chambers. She is a joy to be around, displays a confident and upbeat demeanor, and is someone who always seems to genuinely enjoy what she is doing. Brandi is esteemed by her peers and professors alike, and would be a wonderful choice for a law clerk.

Every year, there are a handful of students at this law school who I am confident could excel at any law school in the country, and in any legal environment—Brandi is certainly one of those. It is for all of these reasons that I enthusiastically recommend Brandi for a law clerk position in your chambers. Please contact me if I can be of additional assistance.

Sincerely,

William W. Berry III  
Montague Professor of Law  
University of Mississippi

Prof. William Berry - [wwberry@go.olemiss.edu](mailto:wwberry@go.olemiss.edu) - 662-915-6859

STATE of TEXAS  
HOUSE of REPRESENTATIVES



GARNET F. COLEMAN  
STATE REPRESENTATIVE  
DISTRICT 147

February 28, 2022

Your Honor:

I am writing you to recommend Brandi C. Granderson. Brandi served as my Committee Clerk in 2019 during the 86<sup>th</sup> Texas Legislative Session. She paid great attention to detail to help ensure committee hearings ran smoothly, and on schedule. She also has a great aptitude to learn about public policy. I am confident that she would be a valuable asset in your chambers.

Her sense of urgency and ability to analyze statutes from multiple perspective is impressive. She possesses excellent written and verbal communication, that she was able to leverage when working with key stakeholders during her time as my committee clerk.

In closing, I believe that Brandi would positively contribute and flourish in any professional working atmosphere.

Sincerely,

A handwritten signature in black ink, appearing to read "Garnet F. Coleman".

Garnet F. Coleman



TARA BLAGG  
POLICY FELLOW  
RAND CORPORATION

1776 MAIN STREET  
P.O. BOX 2138  
SANTA MONICA, CA  
90407-2138

TEL 310.393.0411  
FAX 310.393.4818  
tblagg@rand.org

February 20, 2022

Tara Blagg  
1776 Main Street  
Santa Monica, CA 90407

Your Honor:

It is with great pleasure that I present this letter of recommendation on behalf of Brandi C. Granderson. I am the former Committee Director for the Texas House of Representatives Committee on County Affairs. Ms. Granderson served under my leadership as my Committee Clerk in 2019 during the 86th Texas Legislative Session. During this time, I learned that Ms. Granderson is uniquely equipped with an unparalleled work ethic, excellent attention to detail, and a sharp legal mind.

Proficiency and resourcefulness are words synonymous with Ms. Granderson's professional reputation. Ms. Granderson's ability to prepare comprehensive and succinct analyses relating to the legal and economic impact of state legislation was stellar. Her ability to build working relationships with the political community was essential in maintaining a neutral and professional committee. With her invaluable work in bill analyses, preparation for hearings, shepherding passed bills, and maintaining essential communication with committee members, witnesses, Senators, Representatives and their staffers, we were able to pass over 200 bills out of the committee with no procedural points of order. This had never before been accomplished during the history of the County Affairs committee.

After witnessing her skills, I considered Ms. Granderson my colleague and right hand. She embodies the word leader, and although she was excellent at listening to direction, she undoubtedly taught me as much as I taught her. She is a woman of many talents who is uniquely able to exude both professionalism and warmth at the same time. It came as no surprise to me that during her tenure as Committee Clerk, the Thurgood Marshall College Fund selected Ms. Granderson as a featured speaker to represent their collegiate legal scholars.

In closing, Ms. Granderson adds value wherever she is planted. She will undoubtedly be an excellent addition to your chambers.

Sincerely,

  
Tara Blagg

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and Communities  
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Health, Health Care,  
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Transportation  
International Affairs  
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and Terrorism  
Science and Technology  
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OBJECTIVE ANALYSIS. EFFECTIVE SOLUTIONS.

**MEMORANDUM**

**TO:** Attorney R. Lincer  
**FROM:** Brandi C. Granderson  
**RE:** Frantz Yvont - Potential Repeat  
Client File Number: 17-1234

**I. STATEMENT OF FACTS**

Mr. Frantz Yvont is a non-English speaking man who reportedly neither reads, writes, or understands English. Mr. Yvont demonstrated communicating in Haitian Creole<sup>1</sup> at the time of his trial. Purportedly, a court requested that Mr. Yvont be assigned a competent courtroom interpreter. The court assigned Mr. Marshall Greene as the courtroom's interpreter in Yvont's criminal case. Greene appears to state prior experience and training in courtroom interpretation.

Although the State of Louisiana does not require interpreter certification, it appears that Greene allegedly submitted a resume of credentials and other background experience to establish his competency.<sup>2</sup> Greene seems to indicate he acquired written and verbal communication skills in Haitian Creole.<sup>3</sup> After Greene's post-attorney consultation, reportedly, there were no objections raised regarding competency due to Mr. Yvont's responses to Greene's questions in the consultation. Mr. Yvont's

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<sup>1</sup> See Irene Thompson, *Haitian Creole*, ABOUT WORLD LANGUAGES, <http://aboutworldlanguages.com/Haitian-Creole> (last updated January 21, 2014).

<sup>2</sup> See La. C. Cr. P. art. 25.1.

<sup>3</sup> Thompson, *supra* note 1.

responses during the consultation depict intelligent answers. However, the firm's investigator allegedly identified information indicating Greene reportedly did not accurately represent his competency in communicating and understanding Haitian Creole<sup>4</sup> on the date of Yvont's trial. Additionally, recent televised events demonstrate Greene's errors and purportedly insufficient competency in interpretation.

## II. QUESTIONED PRESENTED

Under La. C. Cr. P. art. 25.1, should the firm challenge the competency qualifications of Mr. Greene as a courtroom interpreter in the *Yvont* case when Greene's alleged interpreter qualifications skills in Haitian Creole are reportedly different from the competency described to the courts; Yvont appears to have understood Mr. Greene at the post attorney consultation; and the alleged objections were not present prior, during, and post-trial?

## III. SHORT ANSWER

Probably not. Any questionable competency should raise objections. It seems the court record is absent of any objections concerning Mr. Green's competency. Objections to the competency of an interpreter necessitate documentation in legal or court records either during the discovery period prior to trial, preliminary hearings, pre-

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<sup>4</sup> See Irene Thompson, *Haitian Creole*, ABOUT WORLD LANGUAGES, <http://aboutworldlanguages.com/Haitian-Creole> (last updated January 21, 2014).

trial motions, during trial, or post-trial. It appears the prior options relating to any competency objections are deficient in the Yvont case. Accordingly, under these circumstances, the court will probably find the challenge of Green's competency is without merit. Although there is an absence of objections to Mr. Greene's alleged qualifications inaccurately representing his interpretation skills of Haitian Creole<sup>5</sup>, the court may reasonably understand the validity of challenging Greene's qualifications. However, it appears the court will probably be indifferent to the timeliness of the interpreter challenge. While the latest televised events of Greene's interpreter errors may illustrate grounds to challenge Greene's interpreter qualifications, the principal facts surrounding the event are irrelevant to the circumstances of the Yvont case. Only interpreters translating to individuals with impaired hearing require certification under Louisiana legislation.<sup>6</sup>

#### IV. DISCUSSION

Under La. C. Cr. P. art. 25.1, a competent courtroom interpreter is appointed to a non-English-speaking person who is a principal party of interest or a witness to translate legal proceedings or testimony. A judge shall appoint an interpreter after consultation with the principal party or their attorney. Interpreters are not required to

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<sup>5</sup> See Irene Thompson, *Haitian Creole*, ABOUT WORLD LANGUAGES, <http://aboutworldlanguages.com/Haitian-Creole> (last updated January 21, 2014).

<sup>6</sup> See La. C.C.P. art. 192.1 (2008).

be certified under this civil code of criminal procedure. The proper application of the jurisprudence surrounding La. C. Cr. P. art. 25.1 seems to be the epicenter of discussion in the cases of *State vs. Santos* and *State v. Ramirez*.<sup>7</sup>

In the case of *State vs. Santos*<sup>8</sup>, the court addresses matters concerning an appeal focusing on questions raised around errors relating to the improper appointment of a language translator. The *Santos* case involves a Spanish- speaking man who files an appeal against the state after being convicted of manslaughter and claims the court erred in the application of La. C. Cr. P. art. 25.1. Santos raises claims surrounding the court's assignment of courtroom interpreters that were neither certified nor fluent in his native language. Reportedly, the basis of Santos's claim appears to be in connection with testimony given by the female arresting officer at the time of the arrest stating her insufficient training in Santos's native language. In addition, Santos's claim purportedly challenges the court's protocol governing the frequency of interpreters appearing in court proceedings. However, the *Santos* court discovers the defense fails to object to any irregularities, performance, or selection of the court-assigned interpreter. The court holds that the defendant fails to establish any errors or inadequacies on record regarding interpretation during all phases of litigation.

In the *Santos* case, the *Santos* court appears to approach the analysis of La. C. Cr. P. art 25.1 with a two-prong test that evaluates whether the hindrance of due process

<sup>7</sup> See *State v. Santos*, 09-789 (La. App. 5 Cir. 4/13/10); 40 So.3d 167; See also *State v. Ramirez*, 13-1554 (La. App. 4 Cir. 11/12/14); 154 So.3d 636.

<sup>8</sup> *Santos*, 40 So.3d at 167.

by the court correlates to language interpretation. The first prong of the court's test evaluates whether the translation of the legal proceedings burdens the defendant's justice. The *Santos* court discovers that the records of the court did not illustrate the improper translation of the testimony. However, the court indicates the defense did not object to the interpreter's qualifications or performance issues.

The second prong of the court's test examines the timeliness of the objection. The *Santos* court appears to point out that the records of the court reveal that the defense did not object to any translation concerns pre-trial, during the trial, or post-trial. Additionally, the court critically evaluates similar cases, such as *State v. Gonzales* and *State v. Lai*, as a determining factor to appraise the defendant's level of understanding from the day of his arrest until the lower court rendered its ruling in *Santos* trial.<sup>9</sup> The court's case analysis indicates that the essential facts of the case did not reveal any detriment to the defendant's substantial rights.<sup>10</sup> The court finds that the defense contentions were meritless, and the lower court is procedurally correct in their selection of interpreters in accordance to La. C. Cr. P. art. 25.1.

The *Santos* case provides insightful guidance on a court's interpretation, reasoning, and ruling on issues concerning the violation of someone's substantial rights regarding the appointment of an improper translator. The apparent impactfulness of the *Santos* case stems from the court's two-prong test. The test

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<sup>9</sup> See *State v. Santos*, 09-789 (La. App. 5 Cir. 4/13/10); 40 So.3d 167.

<sup>10</sup> *Santos*, 40 So.3d at 167.

focuses on steps to preserve the fundamental essence of due process and the timelines of objections by the opposing party. For instance, the interpreter was not well versed in the defendant's native language of Kaqchikel. However, the defense did not raise any objections to the appointment of the interpreter.

The court views the actions of the defense as insufficient in establishing the compromising of the defendant's justice. The *Santos* court states that the defense should raise objections at the initial stages of the trial if there is any anticipation of appeals post-trial. In parallel circumstances, the Yvont case is analogous with regards to objections raised about performance. In the Yvont case, the evidence of objections is absent prior to trial, during the trial, and post-trial. When applying the reasoning of the *Santos* court to the weight of the facts in the Yvont case, it appears to yield an unfavorable ruling for the firm.

In the case of *State v. Ramirez*<sup>11</sup>, the court addresses matters concerning an appeal around contentions of the court erring in selecting an improper translator.<sup>12</sup> The *Ramirez* case involves a Spanish-speaking man convicted of second-degree murder whose primary language was not English. After the trial court's seemingly disapproving ruling, the defendant files an appeal claiming an error in the application of La. C. Cr. P. art. 25.1 by the court.<sup>13</sup>

Ramirez contends the defense objected to the interpreter's performance and lack

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<sup>11</sup> See *State v. Ramirez*, 13-1554 (La. App. 4 Cir. 11/12/14); 154 So.3d 636.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

of credentials, including not being certified. Ramirez's additional claims center around his perception of the interpreter lacking expertise; thus, equating to the numerous translation issues during trial. However, the court views the defendant's contentions as not substantial enough to prove a violation of the defendant's right to due process and a fair trial. After the trial, the court holds that the defendant's assignment of error merits no relief. The court affirms the lower court's ruling.

The *Ramirez* court seems to construe a simple test for considering errors that correlate with directly selecting an improper courtroom interpreter. The court then measures the contentious errors against the elements of La. C. Cr. P. art. 25.1. Reportedly, court records did not reveal prejudice against the defendant during the trial. The court reasons that the defendant's "perceived" notion of the interpreter's lack of expertise and requisite credentials are not proper preservations for review.<sup>14</sup> The court derives its analysis with a thorough assessment of *State v. Santos*<sup>15</sup> as a standard for gauging the level of qualifications needed under Louisiana law.<sup>16</sup>

The court points out in *State v. Santos*<sup>17</sup> that La. C. Cr. P. art. 25.1 requires the appointment of an interpreter who is competent to interpret or translate proceedings and testimony. However, the interpreter must be qualified only if the accused is deaf

<sup>14</sup> *State v. Ramirez*, 13-1554 (La. App. 4 Cir. 11/12/14); 154 So.3d 636.

<sup>15</sup> *Santos*, 40 So.3d at 167.

<sup>16</sup> *See Ramirez*, 154 So.3d at 636.

<sup>17</sup> *See Santos*, 40 So.3d at 167.

or severely hearing-impaired. The defendant in the instant case is neither.<sup>18</sup> Thus, the court-appointed interpreter's lack of certifying credentials did not obstruct justice.

The *Ramirez* case appears useful by providing insight into a court's simple inquest in determining an individual's substantial rights violation. The court's inquest is a two-dimensional evaluation of the following: 1.) The merit of the assignment of error raised by the defense; and 2.) Whether the objections or challenge is objective or subjective in context. For example, one of Ramirez's objections appears to be solely "*subjective*" and does not factually link evidence that his interpreter did not possess the requisite skills and credentials. Thus, the court concludes that the preservation of Ramirez's objections is not adequate for review.

In similar circumstances, Yvont seems only to challenge Green's qualifications after viewing a televised event that brought Mr. Greene's qualification under heavy scrutiny. The court may view the foundation of Yvont's competency challenge as an objection not entrenched with specific claims arising from prejudice or that impedes the process of a fair trial. It seems the facts of the Yvont case indicate the court may reason that Mr. Yvont's substantial rights and the interest of justice were neither violated nor hindered in his court proceeding.

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<sup>18</sup> See La. C. Cr. P. art. 25.1; See also *State v. Santos*, 09-789 (La. App. 5 Cir. 4/13/10); 40 So.3d 167.

## V. CONCLUSION

Mr. Frank Yvont appears likely not to prevail in a suit challenging Mr. Greene's interpreter qualifications. The unfavorable outcome of the case is grounded in underlying principles of the court's analysis from previously discussed cases. The correlating judicial principles of each case illustrate that courts will always hold timeliness and objectivity of objections as virtuous cornerstones for determining due process violations. Hence, it appears the court may be indifferent to the timing of the objections concerning the interpreter's qualification or performance in the Yvont case.

Throughout the Yvont case, the defense never raises objections due to Greene's performance as an interpreter at any point of the trial. The court will possibly view the challenges of Mr. Greene's competency qualifications as being meritless. For instance, Yvont's urgency to challenge Mr. Greene's qualifications derives from recent televised events that call into question Mr. Greene's interpretation skills. Yet, the foundational facts of the event are not comparatively the same. The court's retrospective nature appears to give the impression that it may view Yvont's judicial challenge of Greene's competency as subjective and not objectively rooted in facts found in court records. Thus, Yvont's challenge will appear as a meritless court challenge.

## Applicant Details

First Name	Jason
Middle Initial	P
Last Name	Grimm
Citizenship Status	U. S. Citizen
Email Address	<a href="mailto:jpg Grimm@lawnet.uci.edu">jpg Grimm@lawnet.uci.edu</a>
Address	<div> <div>Address</div> <div> <div>Street</div> <div>67202 Verano Road</div> <div>City</div> <div>Irvine</div> <div>State/Territory</div> <div>California</div> <div>Zip</div> <div>92617</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	5624474373

## Applicant Education

BA/BS From	University of California-San Diego
Date of BA/BS	August 2018
JD/LLB From	University of California, Irvine School of Law
	<a href="http://www.law.uci.edu">http://www.law.uci.edu</a>
Date of JD/LLB	May 6, 2023
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	UC Irvine Law Review
Moot Court Experience	No

## Bar Admission

## Prior Judicial Experience

Judicial Internships/ Externships	No
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Post-graduate Judicial Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

Hoffman, Paul  
hoffpaul@aol.com  
Jarrett, Bryan  
bjarrett@alumni.stanford.edu  
Robinson-Dorn, Michael  
mrobinsondorn@law.uci.edu  
949 824 1043

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**Jason Patrick Grimm**

67202 Verano Road, Irvine, CA 92617 • (562) 447-4373 • jpgrimm@lawnet.uci.edu

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January 23, 2023

The Honorable Irma C. Ramirez  
Magistrate Judge  
United States District Court for the Northern District of Texas  
1100 Commerce Street, Room 1567  
Dallas, Texas 75242

Dear Judge Ramirez:

I am a third-year student at the University of California, Irvine School of Law interested in a clerkship in your chambers for the 2023-2024 term. My lifelong passion for dispute resolution, along with my litigation experience and considerable scientific knowledge, will make me an effective and valuable clerk this upcoming term.

My interest in dispute resolution began as far back as third grade, when I was put in a new class where I struggled to join the already-formed cliques. I was the only new student that year, so, unsurprisingly, I was the last to get picked for basketball. To avoid this daily humiliation, I eventually volunteered to be the referee. Despite not fully understanding the rules, I became the closest thing those playground basketball games had to a mediator, and my role as referee was invoked by my classmates both on and off the playground. This developed into refereeing disputes of all kinds: I regularly mediated disputes between friends, and I advocated for classmates who did not feel comfortable advocating for themselves.

Since starting law school, I have used the objective, middle-of-the-road perspective I developed on the asphalt playground to tackle complex legal issues. At the Colorado Attorney General's Office, I used this perspective, along with my legal research skills and unique professional background to revive claims that my supervisor believed to be expired. Most recently, at the Department of Justice, I used this perspective to sift through agency reports and draft a complaint with over thirty claims for relief. One day, I hope my interest in being a neutral arbiter of disputes will transform into a more formal role, such as being a judge or a mediator. In the more immediate future, I know it would be an asset in your chambers this upcoming term.

Attached you will find my application materials, including letters of recommendation from Professors Hoffman and Robinson-Dorn. I am excited at the prospect of returning to Texas, where my fiancée went to law school, where I lived for two years, and where we are getting married this September. If you have any questions or would like to schedule an interview, my contact information is above. Thank you for your consideration.

Sincerely,

Jason Patrick Grimm

## Jason Patrick Grimm

67202 Verano Road, Irvine, CA 92617 • (562) 447-4373 • jpgrimm@lawnet.uci.edu

### EDUCATION

**University of California, Irvine School of Law**, Irvine, CA

J.D. expected May 2023; GPA 3.679; sitting for CA Bar Exam July 2023

Honors: *UC Irvine Law Review*, Articles Editor (2022–2023); Staff Editor (2021–2022)

Highest Grade: Federal Courts, Constitutional Law, Env. Law Clinic

Environmental Law Scholar (2021–2022, 2022–2023)

Pro Bono Achievement Award (1L for 20 hours, 2L for 50 hours)

Activities: Student Bar Association, *1L, 2L, 3L Class Representative*

Environmental Law Society, *Chair* (2021–2022)

Pro Bono: Coastal Policy Research

Afghan Refugee Assistance Clinic

**University of California, San Diego**, San Diego, CA

B.S. in Environmental Chemistry; GPA 3.134, August 2018

### LEGAL EXPERIENCE

**United States Department of Justice**, Washington, D.C.

September 2022–December 2022

*Law Clerk*, Environment and Natural Resources Division, Environmental Enforcement Section. Drafted complaint with over thirty claims for relief in Clean Air Act case. Drafted consent decree covering corporate defendant's alleged violations of federal and state law in two states. Drafted motion to enter settlement and proposed order in factory explosion case. Participated in pre-trial negotiation meetings with opposing counsel as well as litigation strategy meetings with supervising attorney. Reviewed trial transcript and briefed supervising attorney for jury retrial.

**Colorado Attorney General's Office**, Denver, CO

May 2022–July 2022

*Law Clerk*, Natural Resources and Environment Section. Researched and drafted memo on damages available to state agency for trespass to state land. Drafted memo on liability for prospective litigation opponent for insufficient due diligence. Compiled evidence and drafted administrative orders for enforcement proceedings before state commission. Updated internal database of Colorado criminal laws relevant to assigned practice group.

**Environmental Law Clinic at UCI Law**, Irvine, CA

August 2021–December 2022

*Certified Law Student*. Researched, drafted, and filed amicus brief on behalf of nonprofit organization in California appellate court. Researched and drafted memo on the application of the takings clause to local ordinances requiring wildlife passthrough fencing. Conducted GIS analysis of impacts to client.

**Santa Barbara County District Attorney**, Austin, TX (Remote)

June 2021–August 2021

*Law Clerk*, Consumer and Environmental Protection Unit. Researched and drafted motion opposing criminal demurrer involving takings clause, mental state, and administrative law issues. Researched and drafted memoranda on Fish & Game Code violations, unfair competition, and false advertising.

**Coastal Policy Research Pro Bono Project**, Irvine, CA

January 2021–Present

*Pro Bono Law Student*. Drafted and delivered comment regarding local beach park on behalf of organization to the state commission. Analyzed coastal protection strategy for two states.

### EMPLOYMENT

**D-Max Engineering, Inc.**, San Diego, CA

September 2018–August 2019

*Staff Scientist*. Drafted regulations for municipal clients. Wrote reports for client reporting to the San Diego Regional Water Board. Conducted municipal inspections.

### INTERESTS AND SKILLS

Interests include blacksmithing, hiking, and soccer. Proficient in ESRI ArcGIS. Conversational Italian.

Prepared on January 17, 2023

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Unofficial Transcript

Grimm, Jason P. (27626924)

Grimm, Jason P. (27626924)  
LAW (SCHOOL OF LAW)

Your transcript below is not official and is informational only. It is not for use as a verification of enrollment.

Official transcripts, verifications of enrollment, or other records may be requested from the University Registrar. Refer to the Services section on our website.

(Printer-Friendly)

\*\*\*\*\* THIS IS NOT AN OFFICIAL TRANSCRIPT \*\*\*\*\*

### Previous Degrees

B.S. 08/18 UC SAN DIEGO

### Memoranda

LAW 502 - FACULTY AWARD - SPRING 2021

PRO BONO - 1L ACHIEVEMENT (20+ HRS) - 2020-21

LAW 597E - FACULTY AWARD - FALL 2021

PRO BONO - ACHIEVEMENT (50+ HRS) - 2021-22

### 2020 Fall Semester

COM LAW: CONTRACTS	LAW	500	4.0	B	12.0	
PROCEDURAL ANALYS	LAW	504	4.0	A	16.0	
LAWYERING SKILLS I	LAW	506A	3.0	B	9.0	
LEG RESEARCH PRAC	LAW	508	1.0	S	0.0	<u>SU</u>
LEGAL PROFESSION	LAW	507	4.0	B	12.0	

**Term Totals**      **ATTM: 15.0**      **PSSD: 15.0**      **GPTS: 49.0**      **GPA: 3.267**

**Cumulative Totals**      **ATTM: 15.0**      **PSSD: 15.0**      **GPTS: 49.0**      **GPA: 3.267**

### 2021 Spring Semester

CON ANALYSIS	LAW	502A	4.0	A+	17.2	
COMMON LAW: TORTS	LAW	501	4.0	B+	13.2	
STATUTORY ANALYSIS	LAW	503	3.0	A-	11.1	
LAW SKILLS II	LAW	506B	3.0	A-	11.1	
INT'L LEG ANALYSIS	LAW	505	3.0	A-	11.1	

**Term Totals**      **ATTM: 17.0**      **PSSD: 17.0**      **GPTS: 63.7**      **GPA: 3.747**

**Cumulative Totals**      **ATTM: 32.0**      **PSSD: 32.0**      **GPTS: 112.7**      **GPA: 3.522**

### 2021 Fall Semester

EVIDENCE	LAW	514	4.0	A-	14.8	
SUPREME CRT LIT	LAW	5940	3.0	A	12.0	
ENVIRON LAW CLINIC	LAW	597E	6.0	A	24.0	
LAW REVIEW	LAW	598R	1.0	S	0.0	<u>SU</u>

**Term Totals**      **ATTM: 13.0**      **PSSD: 13.0**      **GPTS: 50.8**      **GPA: 3.908**

**Cumulative Totals**      **ATTM: 45.0**      **PSSD: 45.0**      **GPTS: 163.5**      **GPA: 3.633**

<https://www.reg.uci.edu/access/student/transcript/?seg=L>

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1/13/23, 2:43 PM

Unofficial Transcript

**2022 Spring Semester**

U.S. NATIVE NATIONS	LAW	5686	3.0	B+	9.9	
PROPERTY	LAW	517	4.0	B+	13.2	
SUPREME COURT LIT	LAW	5940	3.0	A	12.0	
FEDERAL COURTS	LAW	515	3.0	A+	12.9	
LAW REVIEW	LAW	598R	1.0	S	0.0	<u>SU</u>

**Term Totals**                      **ATTM: 13.0**    **PSSD: 13.0**    **GPTS: 48.0**    **GPA: 3.692**

**Cumulative Totals**           **ATTM: 58.0**    **PSSD: 58.0**    **GPTS: 211.5**    **GPA: 3.647**

**2022 Fall Semester**

UCDC	LAW	59653	3.0	A+	12.9	
EXTERNSHIP-UCDC	LAW	597DC	10.0	S	0.0	<u>SU</u>
LAW REVIEW	LAW	598R	1.0	S	0.0	<u>SU</u>

**Term Totals**                      **ATTM: 3.0**    **PSSD: 3.0**    **GPTS: 12.9**    **GPA: 4.300**

**Cumulative Totals**           **ATTM: 61.0**    **PSSD: 61.0**    **GPTS: 224.4**    **GPA: 3.679**

**INCOMPLETE GRADES:** 0    **UNITS:** 0.0  
**NR GRADES:** 0    **UNITS:** 0.0  
**P/NP GRADES:** 0    **UNITS:** 0.0  
**S/U GRADES:** 5    **UNITS:** 14.0  
**W GRADES:** 0    **UNITS:** 0.0

**GRADE UNITS ATTEMPTED** 61.0    **GRADE POINTS** 224.4    **UC GPA** 3.679  
**TOTAL UNITS PASSED** 61.0    **UNITS COMPLETED** 75.0

\*\*\*\*\* THIS IS NOT AN OFFICIAL TRANSCRIPT \*\*\*\*\*

January 23, 2023

The Honorable Irma Ramirez  
Earle Cabell Federal Building and  
United States Courthouse  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez:

This letter is written in support of Jason Grimm's application for a judicial clerkship. Jason has been a student of mine in Constitutional Law during his first year at UCI Law and in my Supreme Court Litigation course (taught with my colleague Mark Rosenbaum) this academic year.

Jason is one of the most outstanding students at UCI Law. He consistently made perceptive comments in our Constitutional Law course enriching the experience for other students. He had a firm command of the subject matter and got one of the highest grades in the class.

His work in our seminar has also been outstanding. The students prepare petitions and briefs in actual cases. Jason's documents have been the best in the class. He is a strong writer and has displayed a command of the material and impressive analytical abilities. He has demonstrated all the skills necessary to be a judicial clerk.

Over more than forty years of practice and teaching, I have had occasion to work with hundreds of students from many law schools, including Harvard, Stanford and Berkeley, many of whom have been judicial clerks. Jason compares favorably with the best of those students.

Sincerely,

Paul Hoffman  
Adjunct Clinical Professor of Law,  
University of California, Irvine School of Law

Paul Hoffman - hoffpaul@aol.com

January 23, 2023

The Honorable Irma Ramirez  
Earle Cabell Federal Building and  
United States Courthouse  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez:

I am delighted to recommend Jason Grimm for a clerkship in your chambers. In my Federal Courts class, Jason's curiosity and assiduous attentiveness distinguished him among students—and will ultimately distinguish him among clerks and attorneys.

Federal Courts tends to attract the highest-performing students in law school. And Jason stood out, even among this group. Jason consistently provided insightful analysis and was always ready when called upon. He was analytical and comfortable making arguments, even when pressed to defend his position. This enriched class discussions on subjects in which many students find it too difficult to meaningfully engage. His mastery of Federal Courts was obvious not only in the quality of his in-class contributions, but also in the grade he earned.

My exam was difficult, and I do not inflate grades. Jason was the only student to earn an A+ in my class—and for good reason. He demonstrated clear mastery of a variety of subjects in my Federal Courts class, including standing, abstention, sovereign immunity, jurisdiction, and even the well-pleaded complaint rule.

I am confident that you will find Jason amply competent as a clerk. I am also confident that you will not regret hiring him.

Please let me know if you have any questions or would like to discuss. You may contact me anytime.

Bryan Jarrett  
801-717-6324  
bjarrett@alumni.stanford.edu

Bryan Jarrett - bjarrett@alumni.stanford.edu

January 23, 2023

The Honorable Irma Ramirez  
Earle Cabell Federal Building and  
United States Courthouse  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez:

I write to express my strong support for Jason Grimm's clerkship application. I had the pleasure of teaching and working with Jason in UCI's six-credit Environmental Law Clinic. In addition to receiving the highest grade and Faculty Award for the fall semester, Jason distinguished himself as a mature, serious, and hard-working student.

Jason's research and writing was thorough, thoughtful, clear and careful. In our meetings, Jason demonstrated that he was interested in receiving feedback, and his follow-through demonstrated that he took that feedback into account. Indeed, he handled feedback in the manner that one would hope: as part of an iterative process designed to help improve our understanding, learning, and work product. Demonstrating welcomed initiative, Jason routinely offered to help other clinic students with their work, and to take on new matters. Just as welcomed, Jason worked well under the stress of litigation, and was willing to work on matters involving areas of the law that were new and unfamiliar to him. Without exception, his work was outstanding, and he made his clinic teams better.

In sum, I am confident that Jason possesses the intellect, skills, attitude, and work ethic that will enable him to make a valuable contribution to your chambers. I also expect that Jason's summer job with the Colorado Attorney General's Office, and his externship with the U.S. Department of Justice, will provide him with valuable experience for a clerkship.

Please do not hesitate to contact me if I can be of any further assistance.

Sincerely,

Michael Robinson-Dorn  
Co-Associate Dean for Experiential Education &  
Clinical Professor of Law

Michael Robinson-Dorn - mrobinsondorn@law.uci.edu - 949 824 1043

**Jason Patrick Grimm**

67202 Verano Road, Irvine, CA 92617 • (562) 447-4373 • [jpg Grimm@lawnet.uci.edu](mailto:jpg Grimm@lawnet.uci.edu)

**Writing Sample**

This writing sample is a memo I wrote while at the Colorado Attorney General's Office. In the memo, I analyze what consequential damages are recoverable in an action for trespass to state trust land.

Originally, the memo included analysis on general damages available in an action for trespass to state land. I have removed this analysis for brevity, as well as a section on attorney fees. I exclusively drafted and edited this memo.

To: Supervising Attorney

From: Summer Law Clerk

Subject: Memo re: Consequential Damages for Trespass to State Trust Land

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You have asked me to research the consequential damages available for trespass to land held by the Colorado State Land Board (“Land Board”) for the benefit of Colorado’s K-12 schools. You have also asked me to predict a best-case scenario and a realistic scenario with respect to obtainable damages.

In answer to your question, it is likely the Land Board will be able to obtain consequential damages equal to the cost of the archeological survey and staff time expended to respond to the trespass. However, it is less likely that the Land Board will be able to recover loss of use damages for loss of use of the two-track road, and the Land Board will not be able to obtain annoyance and discomfort damages. The balance of this memorandum contains the basis for my conclusion.

## **I. Background**

### **A. Factual Background**

At statehood, the United States granted the State of Colorado sections of each township to be held in trust for the benefit of Colorado schools. *See* Colorado Enabling Act of 1875 § 7, ch. 139, 18 Stat. 474, 475 (1875); *see also* Colo. Const. § 7. The Land Board manages this trust land, deriving income from leases and other activity that, in turn, supports Colorado schools. It is a trespass to enter this trust land without permission from the Land Board. *See* C.R.S. § 36-1-121.

Recently, damages have occurred to a trust land parcel in Huerfano County. A neighboring property owner directed his employee to re-grade a pre-existing two-track informal road across a mile-long portion of trust land with a bulldozer. The grading cleared vegetation, topsoil, and filled in arroyos and other natural features on the trust land. The filling of the arroyos rendered the former two-track road unusable, as the filled arroyos are not stable enough for motor vehicles to drive over. The Land Board obtained an estimate for the cost to restore the affected area in an amount totaling \$86,500. Additionally, the Land Board contracted for the

performance of an archeological survey in the amount of \$9,100 to assess damage to archeological resources caused by the trespass.

### **B. Legal Background: Statute of Limitations for Continuing Trespasses**

In Colorado, the statute of limitations for an action for trespass is two years. C.R.S. § 13-80-102. Since the grading occurred in the fall of 2019, an analysis of whether the grading is a continuing trespass is necessary to determine whether the action can be maintained.

The grading of the two-track road and resulting damage to trust land is likely a continuing trespass because it has not been abated and the defendant did not have legal authority to grade the land.

The Colorado Supreme Court first recognized claims for continuing torts in *Wright v. Ulrich*. 91 P. 43 (1907). In *Wright*, the homeowner's house was adjacent to a slaughterhouse. The Supreme Court held that the harmful noises and stench emanating from the slaughterhouse and carrying over to the home constituted a continuing nuisance. *Id.* at 43. The Court determined that, until the noises and stench ceased, the slaughterhouse was liable. *Id.* at 44 (citing *Consol. Home Supply Ditch & Reservoir Co. v. Hamlin*, 40 P. 582 (1894)). In *Wright*, the statute of limitations did not bar the homeowner's claim because "the continuing of a trespass or nuisance from day to day is considered in law a several trespass on each day." 91 P. at 44. Therefore, the statute of limitations only begins to run once the defendant abates the nuisance and removes the cause of damage. See *Hoery v. U.S.*, 64 P.3d 214, 218 (Colo. 2003) ("Until the thing tortiously placed on the land . . . is removed, then liability for trespass remains.") (citing 75 Am. Jur. 2d *Trespass* § 26 (2002)).

The trust land remains impacted. The two-track road is unusable due to instability of the filled in arroyos and although some areas have begun to revegetate, the area is not as vegetated as it was prior to the 2019 trespass grading. Like the noises and smells from *Wright*, the impact in this case is ongoing. 91 P. at 44. While the trespass did not "place" anything on the land, it did do damage for which liability persists until the damage is remediated. *Hoery*, 64 P.3d at 218.

As a result, the damage to the arroyos, the vegetation, and the archeological resources is a continuing trespass. Therefore, the Land Board can maintain a suit for damages suffered within the applicable statute of limitations. See *Hawley v. Mowatt*, 160 P.3d 421, 425 (Colo. App. 2007) ("We conclude that, in a continuing trespass case, a plaintiff may recover all past damages

suffered during the applicable limitations period as a result of the defendant's trespass, including those incurred after the commencement of the action but before the trial.”). As the statute of limitations in an action for trespass is two years, C.R.S. § 13-80-102, the Land Board will be able to recover for damages suffered up to two years before filing suit. Having confirmed that the Land Board can maintain an action to recover its damages for trespass, I now turn to a discussion of damages available in trespass actions.

## II. Damages Available in an Action for Trespass to Land

In Colorado, there are two forms of damages recoverable in an action for trespass to land: compensatory damages and punitive damages. Compensatory damages reimburse an injured person for the actual loss suffered. *See Hawley*, 160 P.3d at 423 (first citing *Bd. of Cnty. Comm’rs of Weld Cnty. v. Slovek*, 723 P.2d 1309, 1316 (Colo. 1986) (en banc); and then citing *Harsh v. Cure Feeders, L.L.C.*, 116 P.3d 1286, 1288 (Colo. App. 2005)). The intent behind compensatory damages is to make the injured party whole. *Id.* Punitive damages,<sup>1</sup> on the other hand, are not reimbursement for a plaintiff’s injuries; they punish the wrongdoer and serve as a warning to deter similar conduct. *See Stamp v. Vail Corp.*, 172 P.3d 437, 448 (Colo. 2007) (en banc) (citing *Beebe v. Pierce*, 521 P.2d 1263, 1264 (1974)).

There are two forms of compensatory damages: general damages and special damages. General damages are damages presumed to flow naturally and necessarily from a defendant’s tortious conduct. *See Rogers v. Funkhouser*, 212 P.2d 497, 502 (Colo. 1949) (en banc); *see also* John W. Grund, J. Kent Miller, David S. Werber, 8 Colo. Prac. *Personal Injury Torts and Insurance* § 38:2 (3d ed. 2021) (hereinafter “8 Colo. Prac. § 38:2”). Examples of general damages include (1) the property’s change in market value and (2) restoration damages. Special damages, also known as “consequential damages,” are damages that flow from the defendant’s tortious conduct but are more specific than the usual and natural consequences of the defendant’s wrongful conduct; special damages are peculiar to the particular plaintiff or fact situation. *See Rogers*, 212 P.2d at 502. Consequential damages may include (1) loss of use damages, (2) costs associated with responding to consequences of the trespass, (3) annoyance and discomfort damages, and (4) staff time. *See* 8 Colo. Prac. § 38:2; *cf. Slovek*, 723 P.2d at 1318 (loss of use damages appropriate if property has a subjective use value interfered with by the trespass;

<sup>1</sup> As the factual background is limited, punitive damages are not analyzed.

damages for annoyance and discomfort appropriate if they are distinct and separate result of the property damage). At your request, this memorandum focuses on consequential damages.

### III. Consequential Damages for Trespass Actions

#### A. Loss of Use of the Two-Track Road

While the Land Board may be able to obtain loss of use damages for loss of use of the two-track road, it will have trouble showing the road has a subjective use value necessary for recovery.

Damages for loss of use and enjoyment of property are normally calculated in terms of the owner's ability to receive rent or the loss of an ability to carry on an economic enterprise on the property. *See Slovek*, 723 P.2d at 1317–18 (Colo. 1986); *cf. Miller v. Carnation Co.*, 564 P.2d 127, 128–129 (1977) (affirming \$28,000 loss of use damages award because fly infestation caused by company interfered with homeowners' use and enjoyment of their home). A court uses the hypothetical loss of rental value to determine the amount of loss of use damages. *See Slovek*, P.2d at 1317. While certain property has no rental value due to the intrinsic nature of the property *or because of its present use*, the property may have a special, subjective "use value" to the owner or occupant that is recoverable in an action for trespass. *See id.* at 1318 (citing Daniel B. Dobbs, *Handbook on the Law of Remedies* § 5.3 at 333 & n.10) (emphasis added). An owner can recover for any interference with or loss of the "use value" that results from another's tortious action if that loss can be satisfactorily demonstrated in concrete terms. *Id.*

Though the trust land where the trespass took place is leased, the lessee does not use the two-track road. Therefore, the Land Board will be unable to demonstrate a loss in rental value from loss of use of the road because the road is not used by lessees.

Turning to subjective use value, the trust land parcel's subjective use value stems largely from the value of the two-track road to the Land Board. In *Slovak*, the Supreme Court of Colorado recognized that land may not have a rental value based on its current use, but that the landowner could still recover its subjective "use value" in an action for trespass. 723 P.2d at 1318. The trespass has rendered the two-track road impassable, and the Land Board has lost the ability to use the road for access to and travel across the trust land parcel.

Therefore, is it likely that the damages would be equal to the subjective use value of the two-track road. This value can be determined through estimation: (1) the difference in cost to

access the property via other means, or (2) the increased burden on other Land Board property due to the lack of access to the affected parcel. However, the Land Board might have difficulty demonstrating that “special use value” of the property, because the Land Board (1) did not regularly use the road, and (2) there may not be a measurable increase in burden to other trust land. This leaves the special use value of open space, and while it is possible to put a use value on open space,<sup>2</sup> it is not clear that this value has been impacted by the trespass grading.

As a result, the Land Board is unlikely to recover loss of use damages for loss of use of the two-track road, because it would have difficulty proving the road has a subjective “use value.”

### **B. Damage to Archeological Resources of the Old Taos Trail**

It is likely that the Land Board will recover the cost of the archeological survey as consequential damages because the survey was performed to assess the consequences of the trespass grading.

As referenced above, consequential damages are more specific than the usual and natural consequences of the defendant’s wrongful conduct; consequential damages are peculiar to the particular plaintiff or fact situation. *See Rogers*, 212 P.2d at 502. While most trespass to land cases are likely to include claims of injury to land or structures upon the land, relatively few are likely to include claims of injury to archeological resources contained in and concealed by the land. This is because archeological resources are not evenly scattered throughout the state but are instead concentrated in areas of historical significance. The trust land parcel affected in the present case is known to be land on which people traversing the Old Taos Trail passed over, making it an area with potential historical significance. As Colorado holds title to all historical, prehistorical, and archeological materials originating from land owned by the state or any of its subdivisions (including the Land Board), damage to those materials originating from the trust land parcel is damage to state property. *See* C.R.S. § 24-80-401; 8 C.C.R. § 1504-7:9. The

<sup>2</sup> *See* Charles J Faushold and Robert J. Lillieholm, *The Economic Value of Open Space*, LAND LINES, Sept. 1996 (available at <https://www.lincolnst.edu/publications/articles/economic-value-open-space#:~:text=The%20most%20direct%20measure%20of,an%20open%20and%20competitive%20market>) (“The most direct measure of the economic value of open space is its real estate market value: the cash price that an informed and willing buyer pays an informed and willing seller in an open and competitive market. In rural areas, where highest and best use of land (i.e., most profitable use) is as open space, one can examine market transactions.”).

trespass grading may have harmed archeological resources, which is a relatively rare claim “peculiar” to land with historical significance. The Land Board, needing to assess potential damage, spent approximately \$9,100 on an archeological survey to assess damage done to resources that may exist in the area of the trespass.

The Land Board may be confronted with a demand for proof that the trespass actually damaged archeological resources, in which case it could use the results of the survey to show damage. If the Land Board cannot show actual damage to archeological resources on the trust land, then it may be more difficult to recover the cost of the survey. However, the Land Board could argue that the survey was necessary to assess damage done to the archeological resources on the trust land and that the results of the survey, if they indicate no damage occurred, are irrelevant to recoverability because the Land Board needed to assess whether damage took place.

As a result, it is likely that the Land Board will recover for the cost of the archeological survey because the survey is a response to the trespass and archeological resource damage is unique to the trust land parcel.

### C. Annoyance and Discomfort Damages

The Land Board is a governmental entity that manages Colorado’s trust land for the benefit of public schools in the state. It is not a person and does not “live” on or occupy the land it owns and manages. As a result, the Land Board is a nonoccupant owner and will not be able to recover for annoyance and discomfort suffered due to the trespass in either a best-case or realistic scenario. *See* Restatement (Second) of Torts § 929 cmt. e (Am. L. Inst. 1979); *see also Slovek*, 723 P.2d at 1318 (“[A] nonoccupant-owner cannot recover for any annoyance or discomfort suffered by reason of the property damage.”).

### D. Staff Time

Staff time is likely recoverable in an action for trespass to land because staff time is the resource that the Land Board expended to deal with the consequences of the trespass.

Colorado law permits a plaintiff to recover for employee time lost because of a defendant’s allegedly tortious conduct. *See NetQuote, Inc. v. Byrd*, No. 07-CV-00630-DME-MEH, 2008 WL 2552871, at \*9 (D. Colo. June 17, 2008) (allowing recovery of staff time where a competitor introduced illegitimate leads into NetQuote’s database and NetQuote spent

significant time rooting out the false leads) (citing *People v. Duvall*, 908 P.2d 1178, 1179 (Colo. App. 1995), *as modified on denial of reh'g* (Nov. 24, 1995) (“[O]rdered restitution . . . served to reimburse the victim company for time spent by its president, security manager, and pharmacist in conducting inventories, installing and using security equipment, and cooperating with investigating and prosecuting authorities.”)).

In the present case, Land Board staff have spent significant time investigating, mitigating, and otherwise dealing with the consequences of the trespass grading committed by the defendant. This is identical to the company in *NetQuote*, which spent hours of staff time rooting out illegitimate leads put into NetQuote’s system by a competitor. Just as the staff time was recoverable in *NetQuote*, it is likely recoverable in the present case. Similarly, in *Duvall*, a trial court ordered restitution in a criminal case that included money to reimburse the victim pharmaceutical company for staff time expended searching for and investigating the defendant’s wrongdoing. The conduct of the pharmaceutical company in *Duvall* mirrors that of the Land Board in the present case—the Land Board investigated the trespass to determine what damage had been done to its property.

As a result, staff time is likely recoverable by the Land Board as consequential damages.

#### IV. Conclusion

In a best-case scenario, the Land Board is likely able to recover a significant amount of money damages, including loss of use damages, staff time, and the costs of the archeological survey. In a realistic scenario, the Land Board is less likely to recover as broadly: the Land Board is likely to recover staff time and the costs of the archeological survey as consequential damages.

Considering the evidence and the case law reviewed, I believe the Land Board has the best claim to staff time and the costs of the archeological survey. Those two forms of consequential damages are the surest form of recovery, though recovery for staff time expended should be analyzed further, to determine how much time the investigation took and whether that amount of time is reasonable. Damages associated with loss of use of the two-track road are difficult to demonstrate as the road is not being used by the lessee or the Land Board and are therefore loss of use damages unlikely to be obtained. Damages for annoyance and discomfort

are unobtainable given that the Land Board does not physically occupy the trust land where the trespass took place.

Regardless of the scenario, the Land Board can expect at least nominal recovery, as the law is clear in regarding the grading as a trespass. The Land Board is most likely to recover for staff time expended, followed by the costs of the archeological survey.

Please let me know if you would like me to work more on this.

**Applicant Details**

First Name	<b>Danielle</b>		
Last Name	<b>Harlan</b>		
Citizenship Status	<b>U. S. Citizen</b>		
Email Address	<a href="mailto:danielleharlan@outlook.com">danielleharlan@outlook.com</a>		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> <b>Street</b>  <b>5619 Belmont Avenue, Apt 1112</b>  <b>City</b>  <b>Dallas</b>  <b>State/Territory</b>  <b>Texas</b>  <b>Zip</b>  <b>75206</b>  <b>Country</b>  <b>United States</b> </td> </tr> </table>	Address	<b>Street</b> <b>5619 Belmont Avenue, Apt 1112</b> <b>City</b> <b>Dallas</b> <b>State/Territory</b> <b>Texas</b> <b>Zip</b> <b>75206</b> <b>Country</b> <b>United States</b>
Address			
<b>Street</b> <b>5619 Belmont Avenue, Apt 1112</b> <b>City</b> <b>Dallas</b> <b>State/Territory</b> <b>Texas</b> <b>Zip</b> <b>75206</b> <b>Country</b> <b>United States</b>			
Contact Phone Number	<b>8172717200</b>		

**Applicant Education**

BA/BS From	<b>University of Texas-Austin</b>
Date of BA/BS	<b>December 2017</b>
JD/LLB From	<b>Southern Methodist University Dedman School of Law</b>
	<a href="https://www.smu.edu/Law/Career-Services">https://www.smu.edu/Law/Career-Services</a>
Date of JD/LLB	<b>May 5, 2023</b>
Class Rank	<b>10%</b>
Law Review/Journal	<b>Yes</b>
Journal(s)	<b>International Law Review</b>
Moot Court Experience	<b>No</b>

**Bar Admission****Prior Judicial Experience**

Judicial Internships/ Externships	<b>Yes</b>
--------------------------------------	------------

Post-graduate Judicial  
Law Clerk                      **No**

**Specialized Work Experience**

**Recommenders**

Jones, Rachael  
Rachael.Jones@usdoj.gov  
214-274-0989  
Bavli, Hillel  
hbavli@smu.edu  
Sanchez, Debbie  
dgsanchez@smu.edu

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

## Danielle Harlan

5619 Belmont Avenue, Apt 1112 | Dallas, TX 75206 | (817) 271-7200 | dharlan@smu.edu

April 9, 2023

The Honorable Irma C. Ramirez  
United States Magistrate Court for the Northern District of Texas  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez:

I am a third-year student at SMU Dedman School of Law writing to express my interest in joining your chambers as a clerk in 2023-2025 or 2024-2026. I am interested in your chambers because of your unparalleled impact on the legal community and your reputation as a dedicated mentor. I would be especially interested in helping with your PASS court and any other community outreach.

Few things in life have captured my heart and mind quite like the law; it has been a guiding force since childhood. My mother was a prosecutor, and I grew up listening to her trial stories with awe and admiration. My mother's time as a prosecutor was a powerful example of the law's ability to appropriately administer justice and positively impact people's lives. This inspired me to pursue a career in the legal field and broadened my desire to serve as a public official. Even in law school, I spend much of my free time learning more about the law. I pore over Supreme Court and appellate cases, listen to legal podcasts, comb through legal writing books, and attend legal events, such as the recent Roadways to the Bench event. In the future, I hope to work in the private sector for a few years and then transfer to the public sector for the rest of my career. I am especially interested in joining the U.S. Attorney's Office as an Assistant U.S. Attorney.

Throughout my time in law school, I have focused on nontraditional law school experiences like the Federal Judicial Externship, Government Externship, and Criminal Clinic. Each endeavor developed my legal research, analysis, and writing skills and taught me the intricacies and inner workings of criminal and civil courts. The most memorable experience, however, has been with the SMU Criminal Clinic. Taking part in a clinic allowed me to argue multiple motions in front of Judge White in the 194th District Court in Dallas County and interact directly with clients, helping them through some of the hardest times of their lives. As an aspiring prosecutor, it was an invaluable experience to represent the criminal defendants themselves, as it provided me with the empathy and understanding that will guide me in my future career as a fair and progressive prosecutor.

Ultimately, a clerk's job is to write – and to write well. No skill is more fundamental. I have worked throughout law school to develop the foundation making me an effective legal writer. Additionally, watching and learning from hearings and trials would teach me more about the intricacies of the legal system and how to be an effective oral advocate.

AUSA Rachael Jones once described me as having a “fire in my belly” for the law. I believe this same fervor is what would make me a great clerk. Please find enclosed my resume, transcript, letters of recommendation, and writing sample. You may also contact Judge Lee Morris or John Hardin for reference. Thank you for your time and consideration.

Sincerely,

Danielle Harlan

## Danielle Harlan

5619 Belmont Avenue, Apt. 1112 | Dallas, TX 75206 | (817) 271-7200 | dharlan@smu.edu

### EDUCATION

#### SMU Dedman School of Law

Dallas, TX

*Candidate for Juris Doctor*, May 2023

- GPA: 3.726 (Top 10% = 3.719)
- International Law Review Association, *Case Note and Comment Editor*; *Star Award* (Fall 2021, Fall 2022); *Nomination for Comment Publication*
- Pro Bono Honor Roll (200+ pro bono hours)
- Chief's Counsel for SMU Clinics
- Dean's List, *All Semesters* (Top 25% of Class)
- 2021 Jackson Walker Moot Court Competition, *Best Brief Nominee*
- Board of Advocates, *High School Competition Judge*, *Regional Competition Bailiff*
- The William "Mac" Taylor Inn of Court, *Student Member*

#### The University of Texas at Austin

Austin, TX

*Bachelor of Arts*, in East Asian Studies, minor in Government, December 2017

### EXPERIENCE

#### SMU Criminal Clinic

Dallas, TX

*Chief*, January 2023 – Present

- Supervise and mentor new clinic students
- Create addendum to criminal clinic manual for felony probation violations

*Associate Member of the State Bar of Texas*, August 2022 – Present

- Provided legal advice to clients charged with DWI, possession, assault, and felony probation violation
- Argued motions, including motions for shock probation and suppression, in front of Dallas County judges

#### Perkins Coie

Dallas, TX

*Summer Associate*, May 2022 – August 2022

- Researched data privacy and general commercial litigation issues including topics like H.B. 20, the Electronic Communications Privacy Act, Texas's biometric data law, and successor liability
- Prepared over 20+ memoranda for attorneys and clients

#### United States Attorney's Office for the Northern District of Texas

Dallas, TX

*Legal Extern*, January 2021 – April 2022

*Legal Intern*, May 2021– August 2021

- Researched legal issues, including the constitutionality of COVID-19 jury questionnaires, what constitutes a separate occasion under the Armed Career Criminal Act, and what constitutes reasonable suspicion under multiple scenarios, and drafted legal memoranda, briefs, and motions for over 20 ongoing cases

#### The Honorable Lee Morris, U.S. Bankruptcy Court for the Northern District of Texas

Fort Worth, TX

*Legal Extern*, September 2021 – November 2021

- Prepared bench memoranda on matters including dischargeability, fraudulent intent, and summary judgment on affirmative defenses

#### The Honorable Jamie Cummings, County Criminal Court No. 5

Fort Worth, TX

*Intern*, March 2020 – April 2020

- Shadowed defense attorneys and prosecutors at the courthouse
- Observed trials in felony and misdemeanor courts

#### CEDCA

Beijing, China

*Foreign Consultant*, November 2018 – March 2020

- Prepared prospective high school, graduate and post-graduate students interested in studying abroad for third-party admissions and on-campus/remote interviews

### SKILLS AND INTERESTS

**Language Skills:** Mandarin (spoken and written)

**Interests:** podcasts, presidential biographies, Korean dramas, tennis, and food

Unofficial Transcript

Name: Harlan, Danielle L  
Student ID: 39079512  
SSN: XXX-XX-8414  
DOB: 07/26/XXXX

Print Date: 2023/01/18

----- Academic Program History -----

Program: Law - Juris Doctor  
2020/07/10: Active in Program

----- Beginning of Law Record -----

Fall 2020 (2020/08/17 - 2020/12/11)

For Fall 2020, SMU's course instruction and scheduling included protocols for safety and flexibility in response to the COVID-19 pandemic. SMU taught many courses partially or fully virtual.

Course	Description	Attempted	Earned	Grade	Points
LAW 6365	Legislation and Regulation	3.00	3.00	A-	11.100
LAW 6367	Contracts I	3.00	3.00	B+	9.900
LAW 6403	Torts	4.00	4.00	B+	13.200
LAW 8341	Criminal Law	3.00	3.00	A-	11.100
LAW 8375	LRWA I	3.00	3.00	B+	9.900
Term GPA :	3.450	Term Totals :	16.00	16.00	55.200

Cum GPA 3.450 Cum Totals 16.00 16.000 55.200

Spring 2021 (2021/01/13 - 2021/05/06)

For Spring 2021, SMU's course instruction and scheduling included protocols for safety and flexibility in response to the COVID-19 pandemic. SMU taught many courses partially or fully virtual.

Course	Description	Attempted	Earned	Grade	Points
LAW 6264	Contracts II	2.00	2.00	B+	6.600
LAW 6366	Constitutional Law I	3.00	3.00	B+	9.900
LAW 6404	Property	4.00	4.00	A-	14.800
LAW 6405	Civil Procedure	4.00	4.00	B+	13.200
LAW 8376	LRWA II	3.00	3.00	A	12.000
Term GPA :	3.531	Term Totals :	16.00	16.00	56.500

Cum GPA 3.490 Cum Totals 32.00 32.000 111.700

Fall 2021 (2021/08/16 - 2021/12/10)

Course	Description	Attempted	Earned	Grade	Points
LAW 6214	Construction Law	2.00	2.00	A	8.000
LAW 6309	Con. Crim. Pro.: Investigation	3.00	3.00	B+	9.900
LAW 8050	Public Service Requirement	0.00	0.00	P	0.000
LAW 8137	Federal Judicial Externship	1.00	1.00	P	0.000
LAW 8201	Legal Externship	2.00	2.00	P	0.000
LAW 8455	Evidence	4.00	4.00	A-	14.800
Term GPA :	3.633	Term Totals :	12.00	12.00	32.700

Cum GPA 3.521 Cum Totals 44.00 44.000 144.400

Spring 2022 (2022/01/06 - 2022/05/06)

Course	Description	Attempted	Earned	Grade	Points
LAW 6117	Govt & Public Interest Extern	1.00	1.00	A	4.000
LAW 6238	Data Privacy & Cybersecurity	2.00	2.00	A	8.000
LAW 7205	White Collar Crime	2.00	2.00	A	8.000
LAW 7250	Internal Investigations	2.00	2.00	A-	7.400
LAW 7350	Professional Responsibility	3.00	3.00	A	12.000
LAW 8301	Legal Externship	3.00	3.00	P	0.000
Term GPA :	3.940	Term Totals :	13.00	13.00	39.400

Cum GPA 3.603 Cum Totals 57.00 57.000 183.800

Fall 2022 (2022/08/15 - 2022/12/09)

Course	Description	Attempted	Earned	Grade	Points
LAW 7226	Global Privacy in Black Mirror	2.00	2.00	A	8.000
LAW 7243	Business Law Boot Camp	2.00	2.00	A	8.000
LAW 7641	Criminal Litigation Clinic	6.00	6.00	A+	25.800
LAW 8311	Constitutional Law II	3.00	3.00	A+	12.900
Term GPA :	4.207	Term Totals :	13.00	13.00	54.700

Cum GPA 3.726 Cum Totals 70.00 70.000 238.500

Spring 2023 (2023/01/05 - 2023/05/05)

Course	Description	Attempted	Earned	Grade	Points
LAW 6234	Corporate Compliance	2.00	0.00		0.000
LAW 6239	Police Misconduct Litigation	2.00	0.00		0.000
LAW 6241	Election Law	2.00	0.00		0.000
LAW 6315	Advanced Criminal Law	3.00	0.00		0.000
Course Topic(s): REFORMING THE CRIMINAL JURY					
LAW 7358	Criminal Litigation Clinic Dep	3.00	0.00		0.000
LAW 8230	International Law Review	2.00	0.00		0.000
LAW 8330	International Law Review	3.00	0.00		0.000
Term GPA :	0.000	Term Totals :	17.00	0.00	0.000

Cum GPA 3.726 Cum Totals 87.00 70.000 238.500

Law Career Totals  
Cum GPA: 3.726 Cum Totals 87.00 70.00 238.500

----- End of Unofficial Transcript -----



**U.S. Department of Justice**  
United States Attorney  
Northern District of Texas

1100 Commerce Street, Third Floor  
Dallas, Texas 75242-1699

Main: 214.659.8600  
Fax: 214.659.8809

November 18, 2022

To Whom It May Concern:

It is my honor and privilege to recommend Danielle Harlan for a judicial clerkship. Dani worked as an intern in the Dallas Office for the United States Attorney for the Northern District of Texas during the summer of 2021 and the spring of 2022. For three years, I was a coordinating AUSA for the law interns. During that time, we had approximately 40 different interns work at the office and Dani was one of our best. We were elated when she wanted to come back to the office in the spring following her summer internship.

During her internship, Dani worked on a variety of projects and her work product was excellent. She aided AUSAs in trial preparation by drafting responses to defense pretrial motions and proactive motions filed by the government. When tasked with a research assignment, Dani presented her thorough and accurate findings through excellent writing. She also consistently completed her assignments in a timely and efficient fashion. As a result of her high-quality work product, AUSAs for whom Dani worked would independently return to her for assistance. In addition to her research and writing projects, Dani helped select relevant trial exhibits and reviewed state cases for potential federal prosecution. Despite the laborious task that is trial preparation, Dani never complained and looked for every opportunity to learn from each experience and project.

Dani's personality, selflessness, and work ethic make it easy to recommend her to you. She is passionate and dedicated about everything she does. She always puts forth a positive attitude and is proactive in finding solutions. I firmly believe that Dani would be a valuable addition to your chambers. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Rachael Jones".

L. Rachael Jones  
Assistant United States Attorney  
214-274-0989  
Rachael.jones@usdoj.gov



April 14, 2023

The Honorable Irma Ramirez  
U.S. District Court for the Northern District of Texas  
1100 Commerce Street  
Dallas, TX 75242-1003

Dear Judge Ramirez:

My name is Hillel Bavli. I am an assistant professor of law at the SMU Dedman School of Law. I have been asked to write a letter of recommendation in support of the application of Danielle Harlan.

I served as Danielle's Evidence professor in the Fall Semester of 2021, and I served as her Torts professor in the Fall Semester of 2020. Over the time that I have taught Danielle, I regularly interacted with her, discussed course material with her, spoke to her about her ideas and plans, and watched her progress in my courses. Danielle received an A- in Evidence and a B+ in Torts.

It was great having Danielle in my courses. She is a wonderful student and she regularly approached me with deep and interesting questions that made clear that she was interested in the course material and wanted to engage further with it. Danielle was organized and insightful, and she demonstrated a strong ability to present her ideas clearly. She also participated well in class and asked good, and sometimes challenging, questions. She is clearly very intelligent.

I had numerous conversations with Danielle throughout the semesters in which I taught her, and she has kept in touch with me since completing my courses. I have developed the impression that Danielle is hard-working and very focused, and that she has the intelligence and commitment to accomplish great things. She seems very driven to develop her skills and knowledge, and to learn generally. She is a thinker, and she seems motivated to identify things that she cannot explain and to gain an understanding of them. She regularly attended office hours with deep and interesting questions. She seemed to go above and beyond to engage with course material, organize her thoughts regarding the material, and derive conclusions and raise issues well beyond those discussed in class.

Moreover, Danielle's record outside of my courses is impressive. She has a great GPA, she is involved in various extracurricular organizations and pursuits, and she has held a number of public service externship and internship positions. Indeed, Danielle has expressed a strong interest in public service.

Finally, I have the impression that Danielle is a kind person and of good character—and that she has the potential to be a great attorney and an outstanding member of the legal community. I am excited to see what she accomplishes in the coming years.

In short, I believe that Danielle will be an excellent clerk, and I strongly recommend her for your clerkship program.

Please do not hesitate to contact me should you have any questions. You can reach me by email at [hbavli@smu.edu](mailto:hbavli@smu.edu) or by phone at 214-768-2571.

Sincerely,

**Hillel J. Bavli**

Hillel J. Bavli

**SANCHEZ & SANCHEZ**  
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April 17, 2023

Re: Ms. Dani Harlan

I am the current Acting Director of the Criminal Justice Clinic at Southern Methodist University's School of Law. Ms. Harlan is a current student in the Criminal Justice Clinic. Students in the Criminal Clinic represent people who are charged with misdemeanor criminal cases and felony probation violations. Many of our cases require hearings before a judge.

Ms. Harlan is both fearless and measured. Striking the appropriate balance as Ms. Harlan does is an essential skill for a trial lawyer. Her advocacy skills are strong as are her research and writing skills. She has had numerous hearings before a judge that I have been able to observe, and she consistently shows that she possesses these traits. Her work ethic is beyond reproach. In class, she is an active participant with sound observations.

High emotional intelligence is an asset for working with others, but it is also extraordinarily helpful for selecting a jury. Ms. Harlan assisted me with one of my cases from my private practice. Her assistance was invaluable. One of the most helpful aspects of having a student review police reports and getting their perspective is that it offers some insight into what a potential juror might think about the strength of a case. Ms. Harlan was able to do that brilliantly. She was able to observe and provide feedback in real time of how testimony was potentially impacting jurors during a trial. Her attention to detail in both discovery and while in trial is extraordinary.

Ms. Harlan's intellectual curiosity and work ethic lay the groundwork for what will undoubtedly be a fulfilling legal career. Most importantly, integrity matters greatly to her. I have no doubt that she will be a force for all that is good and just

Sincerely,

*/electronic signature/*

Debora Garcia Sanchez

Attorney at Law

Acting Director Criminal Justice Clinic

Southern Methodist University School of Law

## **Danielle Harlan – Updating Writing Sample (Summer 2022)**

5619 Belmont Avenue, Apt 1112 | Dallas, TX 75206 | (817) 271 – 7200 | [ddharlan@smu.edu](mailto:ddharlan@smu.edu)

I drafted the following client memorandum while at Perkins Coie in Summer 2022. To ensure confidentiality, I removed client names, identifying information, and some legal analysis sections. Perkins Coie authorized the use of this memo for clerkship applications. This memo is my own work product and has not been rewritten.

This memo provided information to a client on a novel way to use existing law, the Texas Citizens Participation Act (TCPA), to defend against potential lawsuits authorized under a new Texas law, Texas House Bill 20 (H.B. 20).

**QUESTIONS PRESENTED**

A new Texas law, known colloquially as House Bill 20 (“H.B. 20”), allows platform users to sue social media platforms for viewpoint “censorship” under Section 143A.007 (“143A suits”). The Texas Citizens Participation Act (“TCPA”) provides for early dismissal of lawsuits based on or in response to a party’s rights to freely speak, petition, or associate. The law also extends additional safeguards to “media” defendants. Can CLIENT use the TCPA for early dismissal of 143A suits?

**SHORT ANSWER**

Potentially. CLIENT could use the TCPA to seek early dismissal of 143A suits, but success would hinge significantly on the extent to which the content-at-issue implicates a matter of public concern. We have identified three methods by which CLIENT can invoke the TCPA’s protections, although each is novel and untested.

.....

**DISCUSSION****I. BACKGROUND****A. THE TEXAS CITIZENS PARTICIPATION ACT****i. General Overview**

The TCPA is an anti-SLAPP law<sup>1</sup> that safeguards the rights of individuals to “petition, speak freely, [and] associate freely.” Tex. Civ. Prac. & Rem. Code § 27.002 (West 2019). By

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<sup>1</sup> “SLAPP” is an acronym for “Strategic Lawsuits Against Public Participation.” SLAPP suits are instituted not to achieve a successful legal outcome but to prohibit a defendant’s participation in a constitutionally protected activity by imposing undue expense and burden through lawsuit. Anti-SLAPP laws allow plaintiffs to move for early dismissal of such cases, and, if successful, have their attorney fees reimbursed.

providing movants with an early opportunity to move for dismissal, the law protects citizens from “retaliatory lawsuits that seek to intimidate or silence them.” *In re Lipsky*, 460 S.W.3d 530, 584 (Tex. 2015). Courts construe the TCPA liberally. *Buzbee v. Clear Channel Outdoor, LLC*, 616 S.W.3d 14, 26 (Tex. App. – Houston [1<sup>st</sup> Dist.] 2020, pet. denied) (internal string citation omitted).

## ii. Recent Developments to the TCPA

Since 2011, there have been two significant developments to the TCPA. First, the Texas Legislature amended the law in 2019 to narrow its scope. *See* Tex. H.B. 2730, 86<sup>th</sup> Leg., R.S. (2019). Second, the Fifth Circuit held that the TCPA no longer applies in federal courts. *Klocke v. Watson*, 936 F.3d 240, 246 (5th Cir. 2019).

### a. *2019 Amendments*

In 2019, the Texas Legislature passed House Bill 2730 (“H.B. 2730”), which limited the TCPA’s scope. *See* Tex. H.B. 2730, 86<sup>th</sup> Leg., R.S. (2019). Before the amendments, litigants used the TCPA in many cases involving no constitutionally protected conduct. *Youngkin v. Hines*, 546 S.W.3d 675, 681 (Tex. 2018). One court of appeals justice claimed that “any skilled litigator could figure out a way to file a motion to dismiss under the TCPA in nearly every case.” *Neyland v. Thompson*, No. 03-13-00643-CV, 2015 WL 1612155, at \*12 (Tex. App. – Austin Apr. 7, 2015, no pet.) (mem. op) (Field, J., concurring).

Most of these amendments do not affect this memo’s analysis. The most relevant amendments are: (1) the new definition of a “matter of public concern”; (2) the addition of a new category of protected defendants; and (3) the new definition of “the exercise of the right of association.” Those changes and their potential effect on the TCPA’s application to 143A suits are discussed *infra*, Part II(B).

*b. The TCPA Cannot Be Used in Federal Courts*

The second modification precluded use of the TCPA in federal court. The Fifth Circuit held that TCPA motions to dismiss are procedural remedies not available in federal court. *Klocke*, 936 F.3d at 246.

B. H.B. 20

i. Overview

H.B. 20 requires “social media platforms” with over fifty million active monthly users to comply with certain reporting and censorship requirements. Tex. Bus. & Com. Code §§ 120.001(1), 120.002(b). H.B. 20 prohibits covered platforms from “censor[ing] a user, a user’s expression, or a user’s ability to receive the expression of another person based on: (1) the viewpoint of the user or another person; (2) the viewpoint represented in the user’s expression; or (3) a user’s geographic location in this state or any part of this state.” Tex. Civ. Prac. & Rem. Code § 143A.002. The term “censor” is defined broadly, meaning: “to block, ban, remove, deplatform, demonetize, de-boost, restrict, deny equal access or visibility to, or otherwise discriminate against expression.” *Id.* § 143A.001(1).

The law allows for public enforcement by the Texas Attorney General and private enforcement by individual users.<sup>2</sup> Private right of action allows individual users to enforce censorship restrictions, permitting such users to seek declaratory relief, injunctive relief, attorney’s fees, and costs. *Id.* § 143A.007(a) (“143A suits”).

## II. ANALYSIS

<sup>2</sup> On May 31, 2022, the United States Supreme Court reinstated a preliminary injunction prohibiting enforcement of H.B. 20 by the Texas Attorney General. *NetChoice, LLC v. Paxton*, 142 S. Ct. 1715 (2022) (mem.) (vacating stay of preliminary injunction). The injunction does not bar private rights of action where individual users can sue to enforce censorship restrictions. *Id.* § 143A.007(a).

Below, we note three ways the TCPA may apply to 143A suits. No strategy is necessarily stronger than the others, and the strategies are not mutually exclusive. The strength of each strategy (or on the ideal permutation of strategies) will depend on several variables – most significantly, the specific content claimed to be “censored.”

#### A. WHAT ARGUMENTS SHOULD BE ASSERTED?

##### i. Platforms Could Argue that a 143A Suit Relates to the Right of Free Speech.

Under the TCPA, a movant may file a motion to dismiss if a plaintiff institutes a “legal action”<sup>3</sup> that is “based on or is in response to a party’s exercise of the right of free speech.” *Id.* § 27.003(a). The “exercise of the right of free speech” is a “communication made in connection with a matter of public concern.” *Id.* § 27.001(3). Therefore, whether content censorship qualifies as the exercise of free speech depends on: (1) whether there is a “communication”; and (2) whether such communication is “in connection with a matter of public concern.” *See id.* §§ 27.001(1), 27.001(3), 27.003(a); *Yu v. Koo*, 633 S.W.3d 712, 721 (Tex. App. – El Paso 2021, no pet.) (using two-part test and looking to whether there is: (1) a communication; (2) that is a matter of public concern).

##### a. *CLIENT Can Rely on First Amendment Jurisprudence to Establish that Content Moderation is a “Communication.”*

Content moderation on CLIENT’s platform likely constitutes a “communication.”<sup>4</sup>

“Communication” is defined broadly as “the making or submitting of a statement or document in

<sup>3</sup> A “legal action” includes lawsuits and therefore includes 143A suits. *See id.* § 27.001(6).

<sup>4</sup> A plain reading of the statute suggests that the act of removing the post, not the user post itself, is the “communication.” Section 27.003(a) states that a party can file a TCPA motion if a plaintiff sues a defendant and that lawsuit is “based on or is in response to a party’s exercise of the right of free speech . . .” *Id.* § 27.003(a). When substituted with the definition of the “exercise of the right of free speech,” Section 27.003(a) states that a party can file a TCPA motion if a plaintiff sues a defendant where the plaintiff’s lawsuit is based on or in response to the *defendant’s* “communication made in connection with a matter of public concern.” *Id.* §§ 27.003(a), 27.001(3). Under this reading, the only possible communication by the *defendant* is the removal of the post. CLIENT did not draft the post and, therefore, it cannot be the defendant’s communication.

any form or medium, including oral, visual, written, audio-visual, or electronic.” *Id.* § 27.001(1). In prior cases, courts have interpreted “communication” broadly to encompass “[a]lmost every imaginable form of communication, in any medium.” *Yu*, 633 S.W.3d at 721 (internal citation omitted). First Amendment case law dictates that the act of content moderation is itself “speech.” *NetChoice, LLC v. Att’y Gen., Fla.*, 34 F.4th 1196, 1210 (11th Cir. 2022) (holding Florida’s anti-social media censorship law, S.B. 7072, was mostly unconstitutional). If content moderation is “speech,” it follows that content moderation is a “communication.”

The Eleventh Circuit recently held that when a social media platform removes users or takes down their content, “it makes a judgment about whether and to what extent it will publish information to its users – a judgment rooted in the platform’s own views about the sorts of content and viewpoints that are valuable and appropriate for dissemination on its site.” *Id.* In other words, these platforms “express themselves (for better or worse) through their **content-moderation** decisions.” *Id.* (emphasis in original). When platforms choose to remove what they perceive to be incendiary, misinformation, or otherwise objectionable content, they “convey[ ] a message and thereby engage[ ] in ‘speech’ within the meaning of the First Amendment.” *Id.* (emphasis in original). Although the Fifth Circuit has not commented on whether it views content moderation as speech, the court’s recent decision to lift the injunction on H.B. 20<sup>5</sup> suggests it may meet this argument with less enthusiasm than the Eleventh Circuit.

*b. Content Moderation Is Likely in Connection with a “Matter of Public Concern.”*

The “exercise of the right of free speech” is defined as “a communication made *in connection with a matter of public concern.*” Tex. Civ. Prac. & Rem. Code § 27.003(3) (West

<sup>5</sup> See *NetChoice v. Paxton*, No. 21-51178 (5th Cir. May 11, 2022) (order staying preliminary injunction pending appeal).

2019) (emphasis added). A “matter of public concern” is defined as “a statement or activity regarding” either (a) “a public official, public figure, or other person who has drawn substantial public attention due to the person’s official acts, fame, notoriety, or celebrity”; (b) “a matter of political, social, or other interest to the community”; or (c) “a subject of concern to the public.” *Id.* § 27.001(7). There are three potential ways that content censorship may qualify as “in connection with” a matter of public concern: (1) content censorship, in general, is “a matter of political, social, or other interest to the community” or “a subject of concern to the public”; (2) the content of the user post implicates any one of the three prongs of the “matter of public concern” definition; or (3) CLIENT is a public figure or “other person who has drawn substantial public attention due to the person’s official acts, fame, notoriety, or celebrity.” *See id.* § 27.001(7)(a). CLIENT could use the first and third options as a defense against almost every 143A suit, while CLIENT could only use the second option for posts that specifically mention a matter of public concern.

Content moderation, in general, may constitute a matter of public concern. H.B. 20 itself was passed because Governor Greg Abbott and other Texas politicians believe that content moderation has affected Republican discourse online. *Paxton*, 2021 WL 5755120, at \*1 (internal citation omitted) (quoting Governor Abbott’s tweet that “[s]ilencing conservative views in un-American, it’s un-Texan[,] and it’s about to be illegal in Texas.”). Even outside of Texas, Florida’s legislators similarly feel that content moderation is a significant public issue, as they passed their own law banning specific forms of censorship by similar platforms. *See id.* (citing *NetChoice, LLC v. Moody*, No: 4:21-CV-220-RH-MAF, \_ F. Supp. 3d \_\_\_, 2021 WL 2690876, at \*12 (N.D. Fla. June 30, 2021)) (pointing to Florida’s similar censorship law, which was meant “as an effort to rein in social-media providers deemed too large and too liberal”). Even outside

the political arena, content moderation remains a hot topic in the news, documentaries, books, and on the platforms themselves. A court could therefore find that content moderation is either “a matter of political, social, or other interest to the community” or “a subject of concern to the public.” *See id.* § 27.001(7)(b)-(c).

CLIENT could also argue that the underlying “censored” post satisfies the “public concern” element. The post would need to implicate one of the three categories under the definition of a “matter of public concern.” *See id.* § 27.001(7). Under the first category, the post must implicate some public figure<sup>6</sup> or official, or another individual who has drawn “substantial public attention.” *Id.* § 27.001(7)(a). Police officers and other law enforcement officers,<sup>7</sup> as well as elected officials,<sup>8</sup> are generally considered public officials or public figures. Matters that implicate either the second or third categories under the definition of a “matter of public concern” will need to relate to topics like politics, social movements, schools and education, international affairs, government, and other social issues that attract significant public attention.

In one example, from Florida, a plaintiff sued Twitter for defamation when Twitter removed a post linking to a news article. *Mac Isaac v. Twitter, Inc.*, 557 F. Supp. 3d 1251, 1261 (S.D. Fla. 2021). Twitter claimed that the post violated its rule against the distribution of hacked material. *Id.* The plaintiff claimed that flagging the material as hacked insinuated that the plaintiff was a hacker, harming the plaintiff’s business and reputation. *Id.* Applying Florida’s own anti-SLAPP law, which requires that a communication be “in connection with public

<sup>6</sup> In *La Tiejira*, a Texas district court granted a TCPA motion to dismiss an adult entertainment star’s lawsuit that sought to hold Facebook liable for a third-party user’s post. 272 F. Supp. 3d at 987. The court held that the entertainment star was a “public figure.” *Id.* The user post was, therefore, “in connection with a matter of public concern” because “communications about ‘public figures’ are matters of public concern.” *Id.*

<sup>7</sup> *MediaOne, LLC v. Henderson*, 592 S.W.3d 933, 941 (Tex. App. – Tyler 2019, pet. denied) (“Police officers and other law enforcement officials are almost always held to be public officials”).

<sup>8</sup> *See, e.g., Weber v. Fernandez*, No. 02-18-00275-CV, 2019 WL 1395796, at \*7 (Tex. App. – Ft. Worth Mar. 28, 2019, no pet.) (finding city councilman was a public figure); *Huckabee v. Time Warner Ent. Co.*, 19 S.W.3d 413, 420 (Tex. 2000) (finding elected judge was a public official).

issues,”<sup>9</sup> the court dismissed the suit, holding that content suppression was a protected activity under the statute. *Id.* In this scenario, the news article (which discussed information found on Hunter Biden’s laptop) was considered a public issue. *Id.* Under this theory, CLIENT should wait for an appropriate test case that clearly implicates a matter of public concern. Furthermore, this application would limit use to cases where a user post explicitly mentions a matter of public concern.

Under First Amendment law, companies can be considered public figures. *Snead v. Redland Aggregates Ltd.*, 998 F.2d 1325, 1329 (5th Cir. 1993) (explaining test for when a corporation is a public figure). CLIENT would likely satisfy the *Snead* test because of the company’s notoriety and constant media scrutiny. *See id.* Therefore, CLIENT could argue that content moderation is “in connection with a matter of public concern” because it concerns CLIENT, a public figure under the definition of the TCPA’s “matter of public concern.”

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### III. CONCLUSION

Application of the TCPA to 143A suits is difficult and necessarily untested. CLIENT would be creating new law on a fairly blank page. As a result, this memorandum previews how the

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<sup>9</sup> This law specifically states that “in connection with public issues” means that the communication “is made before a governmental entity in connection with an issue under consideration or review by a governmental entity, or is made in connection with a play, movie, television, program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work.” Fla. Stat. § 768.295(2)(a). This statute’s application is, therefore, arguably narrower, and would likely serve as an example of a user post that is “in connection with a matter of public concern.” *See* Tex. Civ. Prac. & Rem. Code § 27.001(7). This case also suggests that the proper interpretation of a “communication in connection with a matter of public concern” requires analysis of the content of the user post. *See Mac Isaac*, 557 F. Supp. 3d at 1261.

TCPA might apply, but many (or most) of the arguments remain untested. We advise that TCPA analysis for future 143A suits occur on a case-by-case basis.

## Applicant Details

First Name	<b>Jimmie</b>
Middle Initial	<b>C</b>
Last Name	<b>Herring</b>
Citizenship Status	<b>U. S. Citizen</b>
Email Address	<a href="mailto:jimmie.herring14@gmail.com">jimmie.herring14@gmail.com</a>
Address	<div> <b>Address</b>  <b>Street</b>  <b>1712 S 10th St</b>  <b>City</b>  <b>Monroe</b>  <b>State/Territory</b>  <b>Louisiana</b>  <b>Zip</b>  <b>71202</b>  <b>Country</b>  <b>United States</b> </div>
Contact Phone Number	<b>3183488103</b>

## Applicant Education

BA/BS From	<b>Southern University-Baton Rouge</b>
Date of BA/BS	<b>May 2013</b>
JD/LLB From	<b>Southern University Law Center</b>
Date of JD/LLB	<b>May 18, 2019</b>
Class Rank	<b>15%</b>
Law Review/Journal	<b>Yes</b>
Journal(s)	<b>Southern University Law Review</b>
Moot Court Experience	<b>No</b>

## Bar Admission

Admission(s)	<b>Louisiana</b>
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## Prior Judicial Experience

Judicial Internships/Externships	<b>Yes</b>
Post-graduate Judicial Law Clerk	<b>Yes</b>

## **Specialized Work Experience**

Specialized Work Experience      **Immigration**

### **Recommenders**

Lamotte, Kimberly  
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Eckert, Lisa  
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Laragy, Honorable Judge W. Scott  
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5714816933

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**Jimmie C. Herring, Jr., Esq.**

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February 28, 2023

The Honorable Magistrate Judge Irma C. Ramirez  
United States District Court for the Northern District of Texas  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez,

I am interested in pursuing a two-year clerkship with your chambers for the 2023-2025 term, or any term soon thereafter. Currently, I am a Permanent Attorney Advisor for the Houston, Texas Immigration Court and the Executive Office for Immigration Review. I previously served as an Attorney Advisor and Judicial Law Clerk for the Oakdale, Louisiana Immigration Court, entering through the Department of Justice's prestigious Attorney General's Honors Program.

My experience serving as a law clerk on both the state and federal levels make me an excellent candidate for this position. As an Attorney Advisor, I have dedicated countless hours towards learning federal immigration laws and federal jurisprudence, which has afforded me significant time to hone my interpretation and analysis skills and abilities. During this time, I have also dedicated my time to familiarizing myself with federal procedure while analyzing complex issues that appear before the court. My time in law school, where I successfully balanced and prioritized my time with research focused academic assignments, while also performing near the top of my class academically, has equally prepared me to successfully navigate through challenging assignments that I may face in this clerkship position with your chambers.

More importantly, what has most drawn me to apply for a clerkship in your chambers is the opportunity to clerk for a judge with a career as decorated as yours. I have admired reading about your successful career in private practice, as well as your public service career serving as an Assistant United States Attorney for the Northern District of Texas in both the Civil and Criminal Divisions. I also admired your subsequent appointment to serve on the federal bench as Magistrate Judge for the Northern District of Texas. My interest in clerking for your chambers is motivated by my desire to gain further legal experience with a federal district court, become an Assistant United States Attorney and prosecute various federal crimes, and to develop a well-respected career with the federal government and in public service. Having the opportunity to serve as your law clerk and observe and learn from your guidance is an invaluable experience that I would be honored to have.

My resume, law school transcript, writing sample, and recommendations are submitted with this application. Thank you for taking the time to consider me as your next law clerk. I am happy to provide any additional information that you may require.

Respectfully,

*Jimmie C. Herring, Jr.*

Jimmie C. Herring, Jr., Esq.

## Jimmie C. Herring, Jr., Esq.

9111 Lakes at 610 Drive, Apt. 417, Houston, TX 77054 \* (318) 348-8103 \* jimmie.herring14@gmail.com

### EDUCATION

#### Southern University Law Center

May 2019

Juris Doctor, *cum laude* (GPA 3.5, top 12 %)

#### Southern University Law Review, Associate Editor

Commercial Papers and Negotiable Instruments, *CALI Excellence for the Future Award*

Southern University Law Review Symposium on Immigration, *Co-Chair*

Board of Student Advisors, *Teaching Assistant*

**Publication:** Jimmie Herring, Jr., Note, *The Discrimination, Biased Implications, and Discretion of Prosecutorial Interpretation of Material Evidence in Trial: A Case Analysis of Turner v. United States*, 46 S.U.L. Rev. 105 (2018)

#### Louisiana State University

May 2015

Masters in Public Administration

#### Southern University and Agricultural and Mechanical College

May 2013

Bachelor of Arts in Political Science, *cum laude*

**Honors Thesis:** *The Controversy, Implications, and Purpose of Implementing Voter Identification Laws in the United States: An Underlying Means of Decreasing Minority Voting*

### EXPERIENCE

#### Executive Office for Immigration Review, Houston, TX

*Permanent Attorney Advisor*

September 2022- Present

- Conducted legal research and analysis, as well as drafted judicial decisions on various federal immigration legal issues for a non-detained immigration court

#### Executive Office for Immigration Review, Oakdale, LA

*Attorney Advisor*

September 2020–September 2022

- Conducted legal research and analysis, as well as drafted judicial decisions on various federal immigration legal issues for a detained immigration court as a part of the selective and prestigious Department of Justice's Attorney General's Honors Program

#### The Honorable Chief Judge Robert P. Waddell and Judge Charles G. Tutt, Judges for the First Judicial District Court, Shreveport, LA

*Law Clerk*

August 2019–August 2020

- Drafted criminal post-conviction relief rulings, and conducted legal research and analysis on various criminal and family legal issues

#### The Honorable Chief Judge Shelly Dick, U.S. District Court Judge, Baton Rouge, LA

*Judicial Extern*

August 2018–November 2018

- Conducted legal research and analysis, as well as drafted memoranda on various federal criminal and civil legal issues

#### Hammonds, Sills, Adkins & Guice, LLP, Monroe, LA

*Summer Associate*

July 2018–August 2018

- Conducted legal research and analysis, as well as drafted briefs, motions, and memoranda on various legal issues for the partner and associate attorneys

**Lowe, Stein, Hoffman, Allweiss & Hauver, LLP**, New Orleans, LA

*Summer Associate*

May 2018–July 2018

- Conducted legal research and analysis, as well as drafted briefs, motions, and memoranda on various legal issues for the partner and associate attorneys

**The Honorable Judge Donald R. Johnson, Judge for the Nineteenth Judicial District Court,**

Baton Rouge, LA

*Judicial Extern*

January 2018–May 2018

- Conducted legal research and analysis, as well as drafted memoranda on various state civil court issues for the judge's upcoming civil court proceedings

**The Law Office of Natalie Blackman**, Baton Rouge, LA

*Legal Intern*

January 2018–May 2018

- Conducted legal research and analysis, as well as drafted briefs, motions and memoranda on various legal issues for a prominent solo-practitioner attorney

**East Baton Rouge Parish Office of the Public Defender**, Baton Rouge, LA

*Law Clerk*

August 2017–November 2017

- Conducted legal research and analysis, and prepared motions to assist supervising criminal defense attorneys representing indigent criminal defendants in criminal court proceedings

**CenturyLink**, Monroe, LA

*Public Policy Intern*

May 2017–July 2017

- Drafted policy position papers, as well as conducted policy research in the areas of telecommunications, net-neutrality, Internet broadband, and crime data for a Fortune 500 company's public policy and advocacy agenda

**INTERESTS**

Volunteering with Phi Beta Sigma Fraternity, Inc. in various leadership roles and endeavors; amateur and recreational baseball player; reading about various topics in history and politics; volunteering and participating with various bar associations and organizations

# SOUTHERN UNIVERSITY LAW CENTER OFFICIAL RECORD -- OFFICE OF THE REGISTRAR

*Not valid without impression seal of SULC affixed, Registrar's signature and \*\* END OF TRANSCRIPT RECORD \*\* as final statement*

STUDENT NAME: Herring, Jimmie C.

CURRENT STATUS: Graduated 5/18/2019

STUDENT NO: 0

JD DEGREE AWARDED: 5/18/2019

UNDERGRADUATE SCHOOL: SOUTHERN UNIVERSITY-BATON ROUG

HONORS: Cum Laude

SULC ADMISSION DATE: 8/8/2016

RANK: 13 out of 108

\*\*\*\*\* S. U. L. C. COURSE WORK \*\*\*\*\*

Dept.	Course Number	Sec.	Course Title	Semester Hours	Grade	Earned Hours	Grad Credit	Grade Points
<b>**** Southern University ****</b>								
<b>***** Fall 2016 *****</b>								
Law	421	5	LEGAL WRITING I	2.0	A-	2.0	2.0	7.50
Law	407	3	Basic Civil Procedure	3.0	A	3.0	3.0	12.00
Law	406	3	FAMILY LAW	3.0	C+	3.0	3.0	7.50
Law	402	3	CONTRACTS	3.0	A-	3.0	3.0	11.25
Law	400	3	TORTS I	3.0	A-	3.0	3.0	11.25
Law	429	8	Lawyering Process I	2.0	P	2.0	0.0	0.00
				<b>16.0</b>		<b>16.0</b>	<b>14.0</b>	<b>49.50</b>
							<b>TERM GPA =</b>	<b>3.5357</b>
						<b>CUM. HOURS =</b>	<b>GPA =</b>	<b>3.5357</b>

<b>**** Southern University ****</b>								
<b>***** Spring 2017 *****</b>								
Law	416	9	Legal Research	2.0	B+	2.0	2.0	7.00
Law	404	3	CRIMINAL LAW	3.0	A-	3.0	3.0	11.25
Law	401	5	TORTS II	2.0	A-	2.0	2.0	7.50
Law	422	1	LEGAL WRITING II	2.0	A	2.0	2.0	8.00
Law	417	4	OBLIGATIONS	3.0	B+	3.0	3.0	10.50
Law	415	3	CIVIL LAW PROPERTY	3.0	A-	3.0	3.0	11.25
				<b>15.0</b>		<b>15.0</b>	<b>15.0</b>	<b>55.50</b>
							<b>TERM GPA =</b>	<b>3.7000</b>
						<b>CUM. HOURS =</b>	<b>GPA =</b>	<b>3.6207</b>

<b>**** Southern University ****</b>								
<b>***** Fall 2017 *****</b>								
Law	502	2	EVIDENCE	3.0	B	3.0	3.0	9.00
Law	410	1	Learning Citizenship I	3.0	A	3.0	3.0	12.00
Law	643	1	LAW REVIEW WORKSHOP	1.0	P	1.0	0.0	0.00
Law	636	1	CONSUMER LAW SEMINAR	2.0	A	2.0	2.0	8.00
Law	523	2	PROFESSIONAL RESPONSIBILITY	2.0	A	2.0	2.0	8.00
Law	504	2	LA CIVIL PROCEDURE I	3.0	B-	3.0	3.0	8.25
Law	414	1	CONSTITUTIONAL LAW I	3.0	B+	3.0	3.0	10.50
				<b>17.0</b>		<b>17.0</b>	<b>16.0</b>	<b>55.75</b>
							<b>TERM GPA =</b>	<b>3.4844</b>
						<b>CUM. HOURS =</b>	<b>GPA =</b>	<b>3.5722</b>

Dept.	Course Number	Sec.	Course Title	Semester Hours	Grade	Earned Hours	Grad Credit	Grade Points	
**** Southern University ****									
***** Spring 2018 *****									
Law	599	1	SUCCESSIONS AND DONATIONS	3.0	C-	3.0	3.0	5.25	
Law	521A	2	Trial Advocacy	3.0	A	3.0	3.0	12.00	
Law	510	1	Learning Citizenship II	3.0	A	3.0	3.0	12.00	
Law	505	2	LA CIVIL PROCEDURE II	2.0	C	2.0	2.0	4.00	
Law	413	2	CONSTITUTIONAL LAW II	3.0	B	3.0	3.0	9.00	
Law	643	1	LAW REVIEW WORKSHOP	1.0	P	1.0	0.0	0.00	
Law	418	1	CRIMINAL PROCEDURE	3.0	A	3.0	3.0	12.00	
						18.0	18.0	17.0	54.25
						CUM. HOURS =		66.0	TERM GPA = 3.1912
									GPA = 3.4677
**** Southern University ****									
***** Fall 2018 *****									
Law	905	1	Intellectual Property Law	3.0	B+	3.0	3.0	10.50	
Law	509	2	SALES AND LEASE	3.0	A-	3.0	3.0	11.25	
Law	642	1	CLINICAL EDUCATION I	3.0	A	3.0	3.0	12.00	
Law	790	5	STATUTORY ANALYSIS I	3.0	P	3.0	0.0	0.00	
Law	611	2	CONFLICT OF LAWS	3.0	A	3.0	3.0	12.00	
Law	515	3	COMMERCIAL PAPER	3.0	A	3.0	3.0	12.00	
						18.0	18.0	15.0	57.75
						CUM. HOURS =		84.0	TERM GPA = 3.8500
									GPA = 3.5422
**** Southern University ****									
***** Spring 2019 *****									
Law	681	1	LEGISLATIVE LAW	2.0	A	2.0	2.0	8.00	
Law	601	1	FEDERAL JURISDICTION & PROCEDU	4.0	B-	4.0	4.0	11.00	
Law	629	1	ADVANCED FEDERAL PRACTICE	3.0	B+	3.0	3.0	10.50	
Law	519	2	Pre-Trial Litigation	2.0	W	0.0	0.0	0.00	
Law	512	3	Business Entities	4.0	A-	4.0	4.0	15.00	
Law	507	2	SECURITY DEVICES	3.0	B-	3.0	3.0	8.25	
						18.0	16.0	16.0	52.75
						CUM. HOURS =		100.0	TERM GPA = 3.2969
									GPA = 3.5000

Dept.	Course Number	Sec.	Course Title	Semester Hours	Grade	Earned Hours	Grad Credit	Grade Points
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**GRADING SYSTEM**  
Effective August 2007

**GRADING SYSTEM**  
Effective August 1991

**OTHERS**

A (96 - 100 = 4.0 pts.)  
A- (90 - 95 = 3.75 pts.)  
B+ (87 - 89 = 3.5 pts.)  
B (83 - 86 = 3.0 pts.)  
B- (80 - 82 = 2.75 pts.)  
C+ (77 - 79 = 2.5 pts.)

C (73 - 76) = 2 pts.)  
C- (70 - 72) = 1.75 pts.)  
D+ (67 - 69) = 1.5 pts.)  
D (63 - 66) = 1.0 pts.)  
D- (60 - 62) = .75 pts.)  
F (below 60) = .00 pt.)

A (90 - 100 = 4 pts.)  
B+ (85 - 89 = 3.5 pts.)  
B (80 - 84 = 3 pts.)  
C+ (75 - 79 = 2.5 pts.)  
C (70 - 74) = 2 pts.)  
D+ (65 - 69) = 1.5 pts.)  
D (60 - 64) = 1.0 pts.)  
F ( 0 - 59) = 0 pt.)

**P Passing**  
**I Incomplete**  
**W Withdrawal**  
**WF Withdrawal failure**

*Southern University Law Center - Not an Official Transcript Without School Seal. Unless Specified, The Student is Entitled to Honorable Dismissal.*



Director, Records and Registration

7/14/2021

Date

**\*\* END OF TRANSCRIPT RECORD \*\***



**SOUTHERN UNIVERSITY LAW CENTER**

**Post Office Box 9294**

**Baton Rouge, Louisiana 70813-9294**

December 21, 2022

The Honorable Magistrate Judge Irma C. Ramirez  
United States District Court for the Northern District of Texas  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez,

This recommendation comes on behalf of a most impressive gentleman, Mr. Jimmie C. Herring, Jr., Esq. I had the pleasure of meeting Mr. Herring when he applied to become a member of the Board of Student Advisors as a Teaching Assistant. His outstanding academic success and remarkable interview skills allowed for a prompt acceptance of him into the Board of Student Advisors. I count myself as lucky that he was a member of the team and proud to call him a fellow alumnus of the Southern University Law Center.

Mr. Herring excelled academically, graduating with honors and serving as an Editor of the Southern University Law Review. While in law school, he served in various organizations and opportunities such as the Marshall Brennan Constitutional Literacy Project, Phi Alpha Delta Law Fraternity, Southern University Law Center American Inns of Court, and many other endeavors. His work experience evidences his commitment to the legal profession in opportunities such as working for private law firms, state and federal judges, the public defender's office, and a Fortune 200 company. Upon graduation, he was also awarded with a state judicial court clerkship and the prestigious opportunity of serving as an Attorney Advisor for the Oakdale, Louisiana Immigration Court through the Attorney General's Honors Program. Mr. Herring has consistently carried himself with a certain professionalism and maturity that distinguishes himself from his counterparts. As his supervisor for the Board of Student Advisors, I was always impressed with his maturity, professionalism, and willingness to help others. His academic achievements, professionalism, and dedication to the legal profession has exceeded expectations at every turn.

I believe that this federal judicial clerkship would provide an excellent opportunity for Mr. Herring to hone his leadership skills, and further develop and polish him into a promising, young attorney. Likewise, I believe that Mr. Herring's past experiences and work ethic would be of extreme value to your federal chambers. Therefore, it is without reservation that I recommend Mr. Herring as your federal judicial law clerk. I appreciate the privilege and opportunity to share my comments with you about him. Please feel free to contact me if you need any further information.

Sincerely,

A handwritten signature in blue ink, reading "Kimberly Hardy-LaMotte". The signature is written in a cursive, flowing style.

Kimberly Hardy-LaMotte, Pharm.D., Esq.  
Academic Counselor & Instructor of Law

February 28, 2023

The Honorable Irma Ramirez  
Earle Cabell Federal Building and  
United States Courthouse  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez:

Jimmie Herring interned in the Policy and Law organization when I was the Vice President of Strategic Advocacy for CenturyLink. He impressed me with his integrity, work ethic, and superb writing skills. He is diligent, thoughtful, and insightful, and I strongly recommend him for a Judicial Clerk position.

During his time reporting to me, Jimmie was responsible for assisting with advocacy on technology issues, such as net neutrality and rural broadband development. He approached the technology issues with a keen eye for the underlying legal issues as well as an understanding of the real world impacts.

Jimmie would be an asset to any organization.

Thanks,

Lisa Hensley Eckert, Sr Counsel, International Regulatory Attorney for Tata Communications.

Lisa Eckert - lisahensleyeckert@gmail.com - 303-947-6513

The Honorable Magistrate Judge Irma C. Ramirez  
United States District Court for the Northern District of Texas  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez,

It is my pleasure to recommend Mr. Jimmie C. Herring, Jr. to serve as a Judicial Law Clerk. I have worked closely with Mr. Herring as a supervising judge and mentor through the Department of Justice's Attorney General's Honors Program here in Oakdale, Louisiana. As you may know, the Attorney General's Honors Program is quite competitive and that selection alone is a testament to his prior academic success but over the last year Mr. Herring has been an excellent addition to the court here in Oakdale. He carries out his work assignments quickly and has sought guidance when necessary but most impressive is the ability to grasp and understand complex immigration issues readily and provide well-informed recommendations.

Mr. Herring possesses the qualities that will serve him well as a successful young attorney and he has impressed me with his work ethic, thoughtfulness, ability to manage his time effectively, and his dedication to public service. He is very bright and will bring his intelligence and leadership capabilities to your staff if selected. I am confident that Mr. Herring will succeed and thrive in his learning and growth as an attorney and will be able address your busy docket as a Judicial Law Clerk.

Please feel free to contact me if you need further information.

Sincerely,

/S/

Hon. W. Scott Laragy  
United States Immigration Judge  
Oakdale, Louisiana

**WRITING SAMPLE**

Jimmie C. Herring, Jr., Esq.  
9111 Lakes at 610 Drive, Apt. 417  
Houston, TX 77054  
(318) 348-8103  
jimmie.herring14@gmail.com

I completed this legal writing sample and immigration decision draft during my tenure as an Attorney Advisor and Judicial Law Clerk for the Department of Justice's Attorney General's Honors Program. This immigration decision draft pertains to an immigrant alien's Application for Cancellation of Removal for Certain Nonpermanent Residents, or also known as a Form 42B, where they challenge their charges and allegations of removability from the United States. The immigration decision uses legal analysis and reasoning based on case law and statutes under federal law and laws established through the United States Department of Justice. Certain information in this writing sample has been redacted due to confidentiality. I have received permission from my employer to use this immigration decision as a writing sample.

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
OAKDALE, LOUISIANA**

**IN THE MATTER OF****IN REMOVAL PROCEEDINGS**

[REDACTED]

**File No.:** [REDACTED]**Respondent****CHARGE:**

Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

**APPLICATIONS:**

Cancellation of Removal for Certain Nonpermanent Residents pursuant to §240A(b)(1) of the Act

Voluntary Departure pursuant to §240(B) of the Act

**ON BEHALF OF RESPONDENT:**

[REDACTED]

**ON BEHALF OF THE DEPARTMENT:**

[REDACTED]

**DECISION AND ORDER OF THE IMMIGRATION JUDGE**

**I. PROCEDURAL & FACTUAL HISTORY**

The Respondent is a native and citizen of El Salvador, who entered the United States at an unknown place and time and was not admitted or paroled after inspection by an immigration officer. On July 16, 2020, the U.S. Department of Homeland Security, Immigration and Customs Enforcement (“Department”) issued a Notice to Appear (“NTA”) charging the Respondent as removable pursuant to INA § 212(a)(6)(A)(i). *See* Exhibit 1.

At the September 9, 2020 hearing, Respondent, through counsel, admitted the factual allegations contained in the NTA and conceded removability as charged under section 212(a)(6)(A)(i). Based on Respondent’s admissions and the evidence submitted into the record, the Court found Respondent removable as charged. Respondent designated El Salvador as the country of removal. Respondent indicated he would seek cancellation of removal, and voluntary